

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





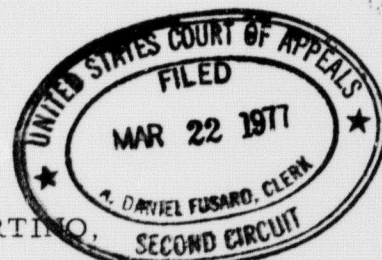
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WITH PROOF  
OF SERVICE

**UNITED STATES COURT OF APPEALS**

*for the*

**SECOND CIRCUIT**



ROBERT E. McDONNELL and ROBERT DeMARTINO,

Plaintiffs-Appellants,

-against-

SOUTHERN VERMONT LAND COMPANY, INC., HARRY  
S. PATTEN, MORTON FREEDMAN and PHILIP GRANDE,

Defendants-Appellees.

ON APPEAL FROM AN ORDER OF THE UNITED STATES  
DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

APPENDIX

BENJAMIN J. GOLUB

Attorney for Plaintiffs-Appellants

10 East 40th Street - New York, New York 10016

LAPPIN, ROSEN, GOLDBERG, SLAVET, LEVENSON & WEKSTEIN

Attorneys for Defendant-Appellee, Southern Vermont  
Land Company, Inc.

1 Boston Place - Boston, Massachusetts 02108

VISCARDI & STEINMAN

Attorneys for Defendant-Appellee, Morton Freedman  
89-57 Lefferts Boulevard - Kew Gardens, New York

DOLAN, McMAHON & MARTINI

Attorneys for Defendant-Appellee, Philip Grande

120 Broadway - New York, New York 10004

(6107)

PAGINATION AS IN ORIGINAL COPY



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## DOCKET ENTRIES

| DIST./CITY | YR. | NUMBER | VOL. | DAY | YEAR | J | N/S | O | R | 23         | S | OTHER | NUMBER | DEN. | YR. | NO. |
|------------|-----|--------|------|-----|------|---|-----|---|---|------------|---|-------|--------|------|-----|-----|
| 207        | 76  | 371    | 12   | 26  | 76   | 4 | 290 | 1 |   |            |   |       | 0712   |      |     |     |
| PLAINTIFFS |     |        |      |     |      |   |     |   |   | DEFENDANTS |   |       |        |      |     |     |

McDONNELL, ROBERT E. ET. ANO.

ROBERT E. McDONNELL and ROBERT  
DeMARTINO

SOUTHERN VERMONT LAND CO. ET. AL

~~SOUTHERN VERMONT LAND COMPANY,~~  
~~INC., HARRY S. PATTEN, MORTON~~  
~~FREEDMAN, and PHILIP GRANDE~~

CAUSE

28 U.S.C.Sec. 1332  
BREACH OF CONTRACT

## ATTORNEYS

## FOR PLTFFS:

Benjamin J. Golub  
10 E. 40th Street  
N.Y., N.Y. 10016  
MU6-4300

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|                                                                                        |                  |                |             |                 |          |
|----------------------------------------------------------------------------------------|------------------|----------------|-------------|-----------------|----------|
| <input type="checkbox"/> CHECK<br>HERE<br>IF CASE WAS<br>FILED IN<br>FORMA<br>PAUPERIS | FILING FEES PAID |                |             | STATISTICAL CAR |          |
|                                                                                        | DATE             | RECEIPT NUMBER | C.D. NUMBER | CARD            | DATE MAI |
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|                                                                                        |                  |                |             | JS-6            |          |



66C

371

McDONNELL

VS SOUTHERN VERMONT LAND CO.

| DATE    | NR. | PROCEEDINGS                                                                                                                                                                                                      |
|---------|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1/26/76 |     | Complaint filed- summons issued (1)                                                                                                                                                                              |
| 1/6/76  |     | Summons ret'd and filed Executed. (2)                                                                                                                                                                            |
| 1-12-76 |     | Motion to dismiss or to quash return of service & summons. (3)                                                                                                                                                   |
| 23-76   |     | Before MISHLER, CH. J.-Motion to dismiss or quash return of summons adj'd to 5-7-76.                                                                                                                             |
| 26-76   |     | Memorandum of Law in support of motion to dismiss filed. (4)                                                                                                                                                     |
| -28-76  |     | Letter dtd 4-26-76 to J. Mishler from J. E. Rosen filed. (5)                                                                                                                                                     |
| 1/3/76  |     | Memorandum of Law in Opposition to Motion by Defts Southern Vermont Land Co., Inc. Harry S. Patten and Philip Grande to Dismiss the within action or alternatively to quash the return of the summons filed. (6) |
| 1/3/76  |     | Affidavit of Robert LeMartino filed. (7)                                                                                                                                                                         |
| -6-76   |     | Reply affidavit of R. McDonnell filed. (8)                                                                                                                                                                       |
| 3-7-76  |     | Before MISHLER, J.- Case called on motion to dismiss Motion argued Decision reserved                                                                                                                             |
| -28-76  |     | Attachments to affidavit of M. Scolnick filed. (9)                                                                                                                                                               |
| 3-12-76 |     | Letter dtd. 8-9-76 from B. Golub to Judge Mishler re: adjd of hearing to 9-17-76 filed. (10)                                                                                                                     |
| 3-17-76 |     | Before MISHLER, J.- Case called for motion to dismiss and adjd to 10-1-76                                                                                                                                        |
| -20-76  |     | Copy of letter dtd 9-16-76 from Benjamin Golub confirming hearing. (11)                                                                                                                                          |
| 0-1-76  |     | Before MISHLER, J.- Case called for motion to dismiss and adjd to 10-15-76                                                                                                                                       |
| 0-15-76 |     | Before MISHLER, J.- Case called for motion to dismiss. and hearing adjd to 12-3-76                                                                                                                               |
| 0-20-76 |     | Letter dtd 10-18-76 to J. Mishler from Jerome E. Rosen filed. (12)                                                                                                                                               |
| 12/3/76 |     | Before Mishler, ChJ-Case called for hearing on motion to dismiss- (Deft's)-& cont'd w/o date                                                                                                                     |
| -4-77   |     | By MISHLER, CH. J.-Memo of decision & order dtd 1-4-77 that defts Southern Vermont, Grande and Patten's motion to dismiss is granted filed. (13)                                                                 |
| -27-77  |     | NOTICE OF APPEAL FILED. (plttf). (14)                                                                                                                                                                            |



ROBERT E. McDONNELL and ROBERT  
DeMARTINO,

Plaintiffs,

-against-

SOUTHERN VERMONT LAND COMPANY,  
INC., HARRY S. PATTEN, MORTON  
FREEDMAN, and PHILIP GRANDE,

Defendants.

Civil Action

# COMPLAINT

PLAINTIFFS DEMAND TRIAL  
BY JURY

Plaintiffs, ROBERT E. McDONNELL and ROBERT DeMARTINO,  
complaining of the defendants, by their attorney, BENJAMIN  
J. GOLUB, allege as follows:

1. At all times hereinafter mentioned, plaintiff ROBERT E. McDONNELL (hereinafter "McDONNELL") was and still is an individual residing at Marie Major Drive, Alpine, New Jersey.

2. At all times hereinafter mentioned, plaintiff, ROBERT DeMARTINO (hereinafter "DeMARTINO"), was an individual residing at Glenby Lane, Brookville, New York.

2A. At all times hereinafter mentioned, plaintiffs maintained an office for the conduct of business at 116 John Street, New York, New York and/or at 84 William Street, New York, N.Y.



3. At all times hereinafter mentioned, defendant, SOUTHERN VERMONT LAND COMPANY, INC., (hereinafter "SOUTHERN VERMONT") was and still is, upon information and belief, a corporation duly organized pursuant to the laws of the State of Vermont with its principal offices for the conduct of business at Adams Road, Williamstown, Massachusetts.

4. At all times hereinafter mentioned, HARRY S. PATTEN, (hereinafter "PATTEN") was and still is an individual residing at, upon information and belief, Avaloch Lodge, Lenox, Massachusetts.

5. At all times hereinafter mentioned, upon information and belief, PATTEN, was and still is the President of SOUTHERN VERMONT.

6. At all times hereinafter mentioned, and upon information and belief, PATTEN, was and still is the majority stockholder of SOUTHERN VERMONT.

7. At all times hereinafter mentioned, defendant, PHILIP GRANDE, (hereinafter "GRANDE") was and still is an individual residing at Simonds Road, Rt. 7, Williamstown, Massachusetts.

8. At all times hereinafter mentioned, the defendant MORTON FREEDMAN, (hereinafter "FREEDMAN"), was and still is an attorney at law, with offices for the conduct of business at 57 Main Street, North Adams, Massachusetts 01247.

9. At all times hereinafter mentioned, but prior to its sale to plaintiffs, the defendant PATTEN owned individually, or as trustee under Declaration of Trust, certain land, with buildings erected thereon (hereinafter "PARCEL NO. 1") and certain undeveloped land commonly known as "raw acreage" (hereinafter referred to as "PARCEL NO. 2"), (sometimes jointly hereinafter referred to as the "real property") situated in Hancock, Berkshire County, Massachusetts.

10. The real property was sold by Patten to plaintiffs in or about July, 1973.

11. Upon information and belief, at all times hereinafter mentioned, SOUTHERN VERMONT was the real estate broker and/or agent of the seller defendant PATTEN, with respect to the aforesaid sale mentioned in paragraph "10" hereof.

12. Upon information and belief, at all times hereinafter mentioned, defendant GRANDE was the real estate broker and/or co-broker and agent of the defendant PATTEN, in the aforesaid transaction and was a stockholder of defendant ✓ SOUTHERN VERMONT and/or was a partner, associate or participant on an equity basis with the seller, defendant PATTEN, in the aforesaid sale, the true nature of the relationship at that time, between defendants GRANDE, PATTEN and SOUTHERN VERMONT, being unknown to plaintiffs except that defendant GRANDE did represent himself and acted in his capacity as the agent for the seller, defendant PATTEN.



13. At all times hereinafter mentioned, defendant FREEDMAN, represented himself to plaintiffs as their attorney in the sale herein.

14. The closing of title to the aforementioned real property took place in the Eastern District of New York, where defendants GRANDE and FREEDMAN were present.

15. This Court has jurisdiction because of the diversity of citizenship of the parties and the fact that the matter in controversy exceeds, exclusive of interest and costs, the sum of TEN THOUSAND (\$10,000.00) DOLLARS.

AS AND FOR A FIRST CAUSE OF ACTION  
AGAINST THE DEFENDANTS PATTEN, SOUTHERN  
VERMONT AND GRANDE

---

16. In or about July, 1973, plaintiffs as purchasers, entered into a contract with the defendant PATTEN, as seller, for the purchase of the real property for the total amount of \$160,000.00.

17. The real estate broker, SOUTHERN VERMONT and/or defendant GRANDE, acted as agent for the defendant PATTEN, in the above transaction.

18. The purchase price for the real property set forth above was broken down in the delivered Deeds to the property as follows: THIRTY-FIVE THOUSAND (\$35,000.00) DOLLARS for Parcel No. 1, and ONE HUNDRED TWENTY-FIVE THOUSAND (\$125,000.00)

DOLLARS for Parcel No. 2, for a total purchase price of ONE HUNDRED SIXTY THOUSAND (\$160,000.00) DOLLARS.

19. Notwithstanding the consideration recited in the Deeds, the agreement between the parties insofar as Parcel No. 2 was concerned was the plaintiffs were purchasing approximately 300 acres at \$400.00 per acre, for a total purchase price of approximately \$120,000.00.

20. Prior to the aforesaid sale, defendant PATTEN through his agent, and/or partner, and/or co-stockholder defendant GRANDE, and/or defendant SOUTHERN VERMONT, represented to the plaintiffs that Parcel No. 2 contained a total of 300 acres and that the purchase price for Parcel No. 2 was based on a price of \$400.00 per acre it being orally represented to the plaintiffs that there were approximately 300 acres contained in Parcel No. 2.

21. At the time that this representation was made, the defendant PATTEN, and SOUTHERN VERMONT, knew and that defendant GRANDE should have known, that Parcel No. 2 contained only approximately 200 acres.

22. The representations with regard to the acreage, contained in Parcel No. 2 were false, fraudulent and misleading to the knowledge of the defendants PATTEN, SOUTHERN VERMONT and upon information and belief, GRANDE and these defendants knew, or should have known they were false, fraudulent and misleading.



when they were made and made them with the intent to deceive plaintiffs and induce plaintiffs thereby to enter into the contract for the purchase of all of the real property, and to close thereon, which plaintiffs did.

23. Plaintiffs were ignorant of this falsity and of the fraudulent and misleading representations made with regard to the acreage, but believed the representations as to the acreage to be true and relied upon the representations, and as a result thereof were induced to and did enter into the contract for the purchase of the real property and paid the defendant PATTEN therefor, the sum of \$160,000.00 in cash and ~~in the~~ <sup>by</sup> ~~assumption~~ <sup>execution</sup> of a purchase money mortgage.

24. Plaintiffs would not have purchased the real property and paid the sum of \$160,000.00 therefor except for the fact   
 ✓ plaintiffs relied on the false, fraudulent representations with respect to the acreage contained in Parcel No. 2, which were made to the plaintiffs by the defendants as aforesaid.

25. As a result thereof, plaintiffs have been damaged in the sum of at least ONE HUNDRED SIXTY THOUSAND (\$160,000.00) DOLLARS.

AS AND FOR A SECOND CAUSE OF ACTION  
AGAINST DEFENDANTS GRANDE,  
SOUTHERN VERMONT AND PATTEN

26. Plaintiffs repeat each and every allegation contained in paragraphs "1" through "24" as if same had been fully set forth at length hereat.

27. Upon information and belief, the value of the acreage that is owned by the plaintiffs, contained in Parcel No. 2 which they purchased from the defendant PATTEN has increased from the time that plaintiffs made their purchase of the aforesaid real property to the present time.

28. Had the defendant PATTEN actually sold and conveyed to the plaintiffs the amount of acreage which defendants falsely and fraudulently represented to the plaintiffs was contained in Parcel No. 2, plaintiffs would now own an additional approximately 100 acres at a substantially increased price per acre over the price which they paid.

29. Therefore, plaintiffs have been damaged in an amount equal to the difference between the current value per acre for the property and the price per acre paid by plaintiffs (\$400.00 per acre) multiplied by 100 additional acres which defendant PATTEN did not convey but which defendants represented was contained in Parcel No. 2 and which, upon



information and belief, is in the amount of at least \$150,000.00, but in any event, plaintiffs have been damaged in an amount equal to the price per acre less \$400.00, times 100 which amount is not definitely ascertainable to the plaintiffs at the present time.

AS AND FOR A THIRD CAUSE OF ACTION  
AGAINST DEFENDANTS GRANDE, SOUTHERN VERMONT  
AND PATTEN

---

30. Plaintiffs repeat and realleges each and every allegation contained in paragraphs "1" through "24" and "27" through "29" as if same were fully set forth at length hereat.

31. Since the price agreed upon was \$400.00 per acre and defendants orally represented that Parcel No. 2 contained approximately 300 acres, but, in reality, it contained only approximately 200 acres; plaintiffs overpaid defendant PATTEN a total of FORTY THOUSAND (\$40,000.00) DOLLARS, (100 acres multiplied by a price of \$400.00 per acre).

32. As a result of the foregoing defendant PATTEN has been unjustly enriched by the sum of FORTY THOUSAND (\$40,000.00) DOLLARS, for monies had and received by defendant PATTEN in cash, or by virtue of plaintiffs assumption of an existing purchase money mortgage.

33. As a result of the foregoing, plaintiffs have been damaged in the sum of FORTY THOUSAND (\$40,000.00) DOLLARS,

no part of which has been paid although duly demanded.

AS AND FOR A FOURTH CAUSE OF ACTION  
AGAINST DEFENDANTS GRANDE, SOUTHERN VERMONT  
AND PATTEN

---

34. Plaintiffs repeat and realleges each and every allegation contained in paragraphs "1" through "24" and "27" through "29" and "31" through "32" as if the same had been fully set forth at length hereat.

35. The contract of sale, annexed hereto and made a part hereof as Exhibit "A" did not contain the complete understanding between the seller, defendant PATTEN and plaintiffs, as purchasers, in that there was a representation made by the defendant PATTEN and/or his agents, defendant GRANDE and/or defendant SOUTHERN VERMONT, to the plaintiffs that the acreage contained in Parcel No. 2 being conveyed, was in the amount of approximately 300 acres. This understanding with respect to the amount of acreage was an oral understanding between plaintiffs and defendants and this understanding was a condition precedent to the signing of the contract by plaintiff and it was further agreed and understood by all the parties hereto that the total acreage of Parcel No. 2 was in an amount of approximately 300 acres and plaintiffs would not have purchased said realty for the price of \$160,000.00 if they knew that the real property contained only approximately 200 acres.



36. Plaintiffs performed its part of the contract required of it to be performed in that the plaintiffs have paid to the defendant PATTEN the sum of \$160,000.00 in cash and in the assumption of the purchase money mortgage existing on the aforesaid real property.

37. The defendant PATTEN has failed to perform his obligation pursuant to the aforementioned agreement in that he has failed to deliver the balance of the acreage to plaintiffs.

38. Plaintiffs have no adequate remedy at law.

AS AND FOR A FIFTH CAUSE OF ACTION  
AGAINST DEFENDANT FREEDMAN

39. Plaintiffs repeat and reallege each and every allegation contained in paragraphs "1" through "24", "27" through "29", "31" through "32" and "35" through "38" as if the same had been set forth at length hereat.

40. At all times hereinafter mentioned, plaintiffs were allegedly to be legally represented in this transaction by the defendant FREEDMAN.

41. Plaintiffs were referred to the defendant FREEDMAN by the defendants GRANDE and SOUTHERN VERMONT, upon information and belief, at the direction of the defendant PATTEN.

42. The plaintiffs were advised that the defendant FREEDMAN was an independent attorney who would represent the best interests of the plaintiffs herein.

43. The defendants did not disclose to the plaintiffs that the defendant FREEDMAN had in prior transactions represented, upon information and belief, the defendants PATTEN and/or SOUTHERN VERMONT and/or GRANDE.

44. The defendant FREEDMAN was told by the plaintiffs and by the defendant GRANDE, and upon information and belief, SOUTHERN VERMONT and PATTEN that the acreage contained in the real property being conveyed by the defendant PATTEN to plaintiffs was to be in approximately the amount of 300 acres.

45. In or about June or July of 1973, plaintiffs retained and employed the defendant FREEDMAN as their attorney to represent them on their behalf in connection with the aforesaid real estate transaction.

46. Defendant FREEDMAN accepted the employment and undertook to represent the plaintiffs in a proper, skillful and diligent manner.

47. The plaintiffs fully advised the defendant FREEDMAN as to the facts constituting the purchase of the aforesaid real property and defendant FREEDMAN was advised, not only by the plaintiffs, but by the defendants as well, as to the amount of acreage allegedly contained in the property involved in this



transaction and was further advised that the plaintiffs were not interested in purchasing the real property at the price to be paid unless the acreage contained in Parcel No. 2 was in the amount that the defendants had represented, to wit: approximately 300 acres.

48. The defendant FREEDMAN was retained not only for the purposes of insuring that the defendants received good title to the real property in question but also to insure that the plaintiffs were to receive the amount of acreage that plaintiffs were allegedly purchasing.

49. The defendant FREEDMAN undertook and accepted such employment and retainer, and was paid his fee therefor, and purported to examine all of the documents with respect to this transaction including, but not limited to, ascertaining that the amount of acreage represented by defendants to be contained in the real property being conveyed was the correct amount and the amount that defendants had represented to plaintiffs was contained in Parcel No. 2.

50. The defendant FREEDMAN, in violation of his duty to the plaintiffs, did not properly examine the title and records with regard to the real property; the defendant FREEDMAN did not ascertain (and was therefore negligent and careless) that, upon information and belief, there was then

and there in existence, prior to the execution of the contract, and prior to closing, a filed survey map of the aforesaid real property indicating the exact dimensions thereof and the exact acreage contained in the real property; that the defendant FREEDMAN was further negligent, careless and reckless in completely failing to ascertain any amount of acreage allegedly contained in the property; that the defendant FREEDMAN was further negligent, careless and reckless in that, according to common custom and usage, he did not advise plaintiffs to their right to obtain from defendant PATTEN a "more or less deed" to real property, which would have entitled the plaintiffs to receive a refund on the purchase price if the acreage contained in Parcel No. 2 was less acreage than was in fact represented to the plaintiffs.

51. The defendant FREEDMAN was negligent, careless and unskillful in examining and searching the title to this property and in ascertaining the amount of acreage contained in the real property.

52. The defendant FREEDMAN was further negligent, careless and unskillful in that he failed to ascertain and discover that there was 100 acres less contained in the Parcel No. 2 sold by defendant PATTEN to plaintiffs than the defendants had represented to the plaintiffs and had advised defendant FREEDMAN.



53. The defendant FREEDMAN was further negligent, careless and unskillful in that he failed to ascertain and discover that there was, upon information and belief, in existence at the time of the contract and at the time of closing on the aforesaid real estate, a survey which showed the exact boundaries of the real property and the exact acreage contained in Parcel No. 2 and he was further negligent, careless and unskillful in that he failed to obtain any representation from the seller as to the amount of acreage contained in the parcel of real property, although he was advised that defendants PATTEN, GRANDE, and SOUTHERN VERMONT had represented to plaintiffs that Parcel No. 2 contained 300 acres and the total price was based upon a price per acre of \$400.00 for a total of approximately \$120,000.00.

54. As a result of the aforesaid negligence, carelessness and unskillfulness of the defendant FREEDMAN, the plaintiffs received 100 acres less than had been represented to them by the defendants PATTEN, GRANDE and SOUTHERN VERMONT.

55. As a result of the negligence, careless and unskillfulness of the defendant FREEDMAN the plaintiffs were induced to making the purchase of the aforesaid real estate which they would not have made, had they been properly advised by FREEDMAN, as was his duty to do, with respect to the amount of the acreage contained in Parcel No. 2.

56. Solely by reason of the foregoing negligence of the defendant FREEDMAN, plaintiffs have been damaged either in the amount set forth in paragraph "24" hereof; or the amount set forth in paragraph "29" hereof; or in the amount set forth in paragraph "32" hereof; or all three.

AS AND FOR A SIXTH CAUSE OF ACTION  
AGAINST THE DEFENDANT FREEDMAN

57. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "24", "27" through "29", "31" through "32", "35" through "38", and "40" through "55", as if the same had been set forth at length hereat.

58. Defendant FREEDMAN contracted and agreed with the plaintiffs as part of the agreement of retainer to ascertain the amount of acreage contained in the real property being purchased by plaintiffs and to otherwise protect the plaintiffs' legal interests in the aforesaid transaction.

59. By failing to discover that Parcel No. 2 contained only approximately 200 acres rather than approximately 300 acres as had been represented and agreed by and between the parties and by failing to inform plaintiffs of the aforesaid fact, and by failing to ascertain that there was a survey in existence with respect to all of the real property, which survey was



available and which contained the exact amount of the acreage contained in the real property and by further representing that the real estate tax estimate of the acreage was inaccurate, and by failing to advise the plaintiffs on the ability to obtain a "more or less" deed to the real property which would have protected their interests and by otherwise failing to properly advise the plaintiffs, defendant FREEDMAN breached his aforesaid agreement and contract with plaintiffs.

60. Solely by reason of the foregoing breach of contract by the defendant FREEDMAN, plaintiffs have been damaged in the amounts set forth in paragraph "56" hereof.

AS AND FOR A SEVENTH CAUSE OF ACTION  
AGAINST DEFENDANTS PATTEN, GRANDE,  
SOUTHERN VERMONT LAND COMPANY, INC.  
AND FREEDMAN

61. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "24", "27" through "29", "31" through "32", "35" through "38", "40" through "55" and "58" through "59" with the same force and effect as if fully set forth at length hereat.

62. The defendants PATTEN, GRANDE, and SOUTHERN VERMONT represented to the plaintiffs as has been hereinbefore alleged, that the real property being sold contained approximately

300 acres when in fact the defendants knew that the real property contained only approximately 200 acres, or approximately 100 acres less than defendants had orally represented were contained in the real property that plaintiffs were purchasing and approximately 100 acres less than the defendant PATTEN had agreed to sell.

63. Thereafter, defendants GRANDE and SOUTHERN VERMONT individually and as an agent for PATTEN and, upon information and belief, as directed by PATTEN, referred plaintiff to a local attorney, the defendant FREEDMAN, and defendants represented to plaintiffs that FREEDMAN was in fact an independent counsel who would effectively represent the plaintiffs' best interests in connection with the purchase of the aforesaid real property when in fact, upon information and belief, FREEDMAN was not an independent counsel, but had previously represented PATTEN and the defendants failed to disclose that fact to the plaintiffs.

64. The defendants further failed to disclose that a survey existed on the real property prior to the time of signing the contract. Defendants further failed to disclose the availability to plaintiffs of a "more or less" deed, which would have protected plaintiffs in this transaction had the acreage contained been less than what was represented, which was, in fact,, the case.



65. Based upon the representations of the defendants and their failure to disclose to the plaintiffs the true facts with regard to the amount of acreage contained in the real property, plaintiffs completed the transactions hereinbefore set forth, and purchased the real property in the belief and understanding that the acreage contained therein was approximately 300 acres and plaintiffs were as has been hereinbefore alleged, induced to make such purchase as a result of said representations when the defendants knew, or should have known that the acreage contained was not approximately 300 acres but was approximately 200 acres and that there was a survey in existence at the time which shows the actual amount of the acreage.

66. The tax bill rendered to plaintiffs at closing of title indicated that the acreage contained in the parcel was less than 200 acres but when plaintiffs requested information with regard thereto they were advised falsely, fraudulently and misleadingly by the defendants that the Massachusetts tax assessed upon raw acreage, such as that purchased herein, was "estimated only" with respect to such raw acreage, and that Parcel No. 2 in fact contained approximately 300 acreage, when in fact, the defendants knew or should have known the exact acreage as a result of a survey which was existing with respect to the real property.

67. Relying upon the representations made by defendants SOUTHERN VERMONT, PATTEN and GRANDE and upon the advice given to them by the defendant FREEDMAN, as their attorney, and upon the statements, representations and promises made by all the defendants as aforesaid, the plaintiffs executed and completed the transactions contemplated pursuant to the agreement and made the payments and assumed the existing purchase money mortgage, as set forth above.

68. Upon information and belief, theretofore and thereafter, the defendants had entered into a conspiracy and scheme, maliciously, to defraud and deceive the plaintiffs and to induce them, by said false, fraudulent and misleading statements, and by the defendants' concealment of the true facts as to the amount of acreage contained in the parcels of real property, and by intentionally, willfully and knowingly failing to disclose to the plaintiffs the existence of a survey on the property and further failing to advise the plaintiffs as to the exact acreage of the real property, into entering the transactions as aforesaid.

69. In furtherance of the said conspiracy and scheme the defendants failed to advise plaintiffs (i) that defendant FREEDMAN had previously represented defendant PATTEN: (ii) that the tax bills rendered by the Massachusetts Tax Assessment were, in fact, accurate as a result of the fact that the bills were



based upon a survey in existence which showed the actual acreage that existed in Parcel No. 2 (iii) of the existence of the survey; (iv) of the common practice of executing a "more or less deed" so that plaintiffs would have been protected in the event that the acreage was less than they had bargained for; (v) that the acreage was less than the amount represented, to wit: 200 instead of 300 acres.

70. In furtherance of said conspiracy and scheme, the defendants (i) caused to be mailed to the plaintiffs, letters and documents which would have the effect of assuring the plaintiffs that they were properly and adequately being represented with respect to this transaction in that their interests were being protected (ii) caused statements to be made that they were receiving the acreage which they had bargained for and (iii) caused concealment of the true facts and circumstances.

71. In furtherance of said conspiracy and scheme, the defendants caused the plaintiffs to assume a mortgage and mortgage note and to complete all of the documents necessary to effectuate the sale of the aforesaid real property.

72. The plaintiffs duly performed all of the agreements aforesaid on their part and each and every term and condition thereof as required of them hereunder.

73. In furtherance of said conspiracy and scheme, the defendant has received, accepted and retained the purchase price and profit of the said aforesaid real property and the plaintiffs have been deprived of the use thereof.

74. As a result thereof, and as a result of defendants' conspiracy and scheme, plaintiffs have been damages as set forth in paragraphs "24" and/or "29" and/or "32" hereof, or all.

WHEREFORE, plaintiffs demand judgment as follows:

(i) On the first cause of action in the amount of \$160,000.00; and

(ii) On the second cause of action in an amount equal to the current price per acre less \$400.00 multiplied by 100; and

(iii) On the third cause of action in the amount of \$40,000.00; and

(iv) On the fourth cause of action, if the defendants, or any of them can convey a valid and marketable title to 100 acres similar in location and value to the approximately 200 acres already transferred that defendants be decreed specifically to perform the terms and conditions of the agreements on their part to be performed and to execute and deliver to plaintiffs a proper deed, suitable for recording, conveying a good title in fee to such additional 100 acres free and clear of all



mortgages, liens and encumbrances and without the requirement of any further payment to defendants by plaintiffs hereunder, and that if defendants cannot transfer to plaintiffs the 100 acres that they be required to pay to plaintiffs a sum equal to the fair market value of such additional 100 acres; and

(v) On the fifth cause of action in an amount as set forth in (i) and/or (ii) and/or (iii) above and/or all three; and

(vi) On the sixth cause of action in an amount set forth in (i) and/or (ii) and/or (iii) above, and/or all three; and

(vii) On the seventh cause of action in an amount as set forth in (i) and/or (ii) and/or (iii) above, and/or all three;

All together with interest on the above amounts from July 30, 1973, and the costs and disbursements of this action; together with such other, further and different relief as to the Court may seem just and proper in the circumstances.

Dated: New York, New York, February 19, 1976

Yours, etc.,

BENJAMIN J. GOLUB  
Attorneys for Plaintiffs  
Office & P.O. Address  
10 East 40th Street  
New York, New York 10016  
(212) 686-4300

TO: CLERK, United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York

TO: SOUTHERN VERMONT LAND COMPANY, INC.  
Adams Road  
Williamstown, Massachusetts

TO: HARRY S. PATTEN  
Avaloch Lodge  
Lenox, Massachusetts

TO: MORTON FREEDMAN  
27 Main Street  
North Adams, Massachusetts 01247

TO: PHILIP GRANDE  
Simonds Road  
Route 7  
Williamstown, Mass. 01267



## EXHIBIT "A" TO COMPLAINT - CONTRACT OF SALE

*Agreement*

The undersigned SELLER agrees to SELL and the undersigned BUYER agrees to BUY the real estate situated at No. 1111 St. Dean State of Mass.

Total Price \$ 16,000.00

Deposit received by SELLER \$ 1,000.00

Balance due SELLER at passing of title \$ 15,000.00

Cash to be paid by BUYER at passing of title (over and above mortgage loan if any) \$

(a) If the BUYER is unable to obtain a new first mortgage for \$ \_\_\_\_\_ at \_\_\_\_\_ % for \_\_\_\_\_ years, all deposits are to be returned and all parties discharged. (or b) The balance of the purchase price to be paid by assuming the present first mortgage of \$ \_\_\_\_\_ to be adjusted to the balance at the time of passing.

The deed to be delivered on or about July 19 1960

The SELLER to give the BUYER possession of Said lot on 19

The SELLER to pay a regular commission of \_\_\_\_\_ % as per \_\_\_\_\_

\_\_\_\_\_ rates to A.S. AGREED TO BE PAID BY SELLER Broker.

SELLER to give a good and marketable title by deed, subject to easements and restrictions of record, and may use part of the purchase money to pay existing encumbrances. Should the property be damaged by fire or other casualty before the passing of title, the buyer has the option to withdraw and receive his deposit. If BUYER defaults he waives claim to the deposit above which becomes the property of the SELLER and BROKER, equally, as liquidated damages. Interest, Rents, Fuel, Taxes and Insurance to be adjusted as of the date of passing title. All regular fixtures to pass with the sale.

Included: TV antenna \_\_\_\_\_ Rugs: \_\_\_\_\_ Refrig \_\_\_\_\_ Air Conditioners \_\_\_\_\_

Other Items: \_\_\_\_\_

Signed and sealed Date July 19 1960 Broker J. E. L. Hall & Co.

Buyer [Signature] Buyer's Wife or Husband \_\_\_\_\_

Seller [Signature] Seller's Wife or Husband \_\_\_\_\_

Order these forms direct from:

REALFORMS Box 1, Brookline, Mass. 02146

FORM RA

ATTORNEY'S COPY

## SUMMONS

## United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. \_\_\_\_\_

ROBERT E. McDONNELL and  
ROBERT DEMARTINO,

Plaintiff

v.

SOUTHERN VERMONT LAND COMPANY, INC.,  
HARRY E. FATTEN, MORTON FREEDMAN  
and PHILIP GRANDE,

Defendant

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon **BENJAMIN J. COLUB, ESQ.,**  
 plaintiff's attorney, whose address **10 East 48th Street, New York, New York 10016**

an answer to the complaint which is herewith served upon you, within **20** days after service of this  
 summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be  
 taken against you for the relief demanded in the complaint.

S/LEWIS ORFEL

Clerk of Court.

S/STUART GROSSMAN

Deputy Clerk.

Date: **FEBRUARY 24, 1976**

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

BEST COPY AVAILABLE



MOTION TO DISMISS OR TO QUASH RETURN OF SERVICE  
AND SUMMONS

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

ROBERT E. McDONNELL  
and ROBERT DeMARTINO,

Plaintiffs

vs.

SOUTHERN VERMONT LAND COMPANY, INC.,  
HARRY S. PATTEN, MORTON FREEDMAN  
and PHILIP GRANDE,

Defendants

No. 76 CIV 371

MOTION TO DISMISS  
OR TO QUASH  
RETURN OF SERVICE AND SUMMONS

Southern Vermont Land Company, Inc., Harry S. Patten and Philip Grande move the Court as follows:-

1. To dismiss the within action or in lieu thereof to quash the return of service of summons on the grounds:-

- (a) That the Defendant Southern Vermont Land Company, Inc. is a corporation organized under the laws of the State of Vermont and was not and is not subject to service of process within the Eastern District of New York.
- (b) That the Defendant Harry S. Patten is a resident of the State of Vermont with a place of business in the Commonwealth of Massachusetts, and was not and is not subject to service of process within the Eastern District of New York.
- (c) That the Defendant Philip Grande is a resident of the Commonwealth of Massachusetts, and was not and is not subject to service of process within the Eastern District of New York.
- (d) That the said Defendants have not been properly served

with process in this action, all of which more clearly appears in the Affidavit of Harry S. Patten hereto annexed as Exhibit "A".

2. To dismiss this action on the grounds that it is in the wrong District because the jurisdiction and venue of this Court is invoked on the allegation that the closing of title to the real property which is the subject matter of the action took place in the Eastern District of New York, and such was not the case as appears by Exhibit "A".

This Motion is made in accordance with Rule 12 of the Federal Rules of Civil Procedure. Defendants request oral argument.

SOUTHERN VERMONT LAND COMPANY, INC.,  
HARRY S. PATTEN and PHILIP GRANDE  
By their Attorney,

---

Jerome E. Rosen, APPEARING SPECIALLY  
Lappin Rosen Goldberg  
Slavet Levenson & Wekstein  
One Boston Place  
Boston, Mass. 02108  
617-261-1000



EXHIBIT "A" TO MOTION - AFFIDAVIT OF HARRY S. PATTEN, A DEFENDANT, IN SUPPORT OF MOTION TO QUASH

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

ROBERT E. McDONNELL and ROBERT DeMARTINO  
Plaintiffs

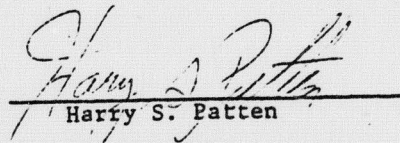
vs.

SOUTHERN VERMONT LAND COMPANY, INC., HARRY S. PATTEN, MORTON  
FREEDMAN, and PHILIP GRANDE  
Defendants

AFFIDAVIT IN SUPPORT OF MOTION TO QUASH

Harry S. Patten, being duly sworn, deposes and says:

1. At all times material to the instant suit I was a resident of the State of Vermont, with the usual place of business at Adams Road, Williamstown, Massachusetts.
2. At all times material to the incident action I was an officer of Southern Vermont Land Company, Inc.
3. At no time have I ever met the Plaintiffs herein, Robert E. McDonnell and Robert DeMartino. I have no recollection of ever haven spoken with either of them on the telephone.
4. At no time material to the instant suit was I in the State of New York.
5. The Agreement of purchase and sale of the real estate referred to in the Plaintiffs' complaint was executed by me in Massachusetts.
6. The deed to the real estate referred to in the Plaintiffs' complaint was delivered by me in Massachusetts.
7. The considerations payable to me as Trustee were delivered to me in Massachusetts, contemporaneously with the recording of the aforesaid deed at the Northern Berkshire Registry of Deeds at Adams, Massachusetts.
8. The summons in the above entitled matter was not served on me personally, but was left at my office at Adams Road, Williamstown, Massachusetts.

  
Harry S. Patten

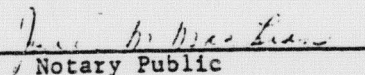
COMMONWEALTH OF MASSACHUSETTS

Berkshire, ss:

April 8, 1976

Then personally appeared the above-named Harry S. Patten and acknowledged the foregoing instrument to be his free act and deed, before me,

My commission expires: 7/1/77

  
Notary Public

AFFIDAVIT OF PHILIP GRANDE, A DEFENDANT, IN SUP-  
PORT OF MOTION TO QUASH

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
ROBERT E. McDONNELL  
and ROBERT DeMARTINO,

Plaintiffs,

vs

No. 76 CIV 371

SOUTHERN VERMONT LAND COMPANY, INC.,  
HARRY S. PATTEN, MORTON FREEDMAN  
and PHILIP GRANDE,

Defendants.  
-----x

A F F I D A V I T

Philip Grande, being duly sworn, deposes and says:-

1. At all times material to the instant suit I was a resident of the Commonwealth of Massachusetts.
2. On or about July 6, 1973, Robert E. McDonnell ("McDonnell") and Robert DeMartino ("DeMartino") walked into my office in Williamstown, Massachusetts, unannounced and unsolicited. They stated that I had been recommended to them and that they wished to purchase land in the Williamstown area suitable for development.
3. I showed them some property that day, which had been listed with me, in Hancock, Massachusetts, on the Easterly side of Route 43, which was owned by Harry S. Patten ("Patten") as a trustee under a Declaration of Trust. Prior to viewing the property, I obtained a survey map and we then viewed the property, which included a residence, by walking portions of the property and by flying over it to obtain an aerial view to determine the proximity of the parcel to various other points of interest in the area.



4. We returned to my office and I advised them that an application for subdivision approval had been filed and was being contested in the Courts. I showed them a plan of the proposed subdivision, and we counted the number of lots on this Plan. The sale price was predicated upon the number of lots in the proposed subdivision, plus the value of the house. In fact, I made it quite clear to them that I was making no representations regarding acreage on the buy and sell agreement since neither the survey nor the subdivision plan contained any reference to acreage.

I stated to them that I thought the likelihood of subdivision plan approval was good but that it required a vigorous presentation in the Courts and recommended that they contact the attorney who was handling the subdivision Appeal, as well as the Surveyors, Nichols & Manuier of Holyoke, Massachusetts to obtain a professional evaluation of the likelihood of Approval. I emphasized that if they bought the property it would be imperative to continue the zoning appeal action since the value of the property would be greatly enhanced if the proposed subdivision was approved.

5. McDonnell and DeMartino stated that they wanted to buy the property, and I made out a purchase agreement in longhand that same day, which agreement was signed by McDonnell and DeMartino, and I arranged to obtain the signature of Mr. Patten. They inquired about an attorney to represent them on the closing, and I told them there were several attorneys in town and that they could use whomever they wished. I stated that Mr. Morton Freedman, a local attorney, had represented their friend from New York who had recommended them to me.

6. Approximately ten days thereafter, I was advised that the title search had been completed and that a Closing was in order. I called McDonnell and DeMartino and asked them to come to North Adams, Massachusetts. They advised that they were too busy on the Sugar Exchange to get away. In order to accomodate them, it was agreed that their attorney, Mr. Freedman, and

I would meet them at LaGuardia Airport in New York so that they could review various documents with Mr. Freedman.

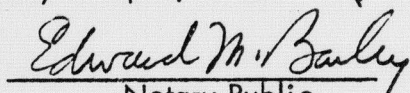
7. Mr. Freedman and I then flew to LaGuardia and met McDonnell and DeMartino there in the Airport. Mr. Freedman went over the title details and the other documentation and McDonnell and DeMartino delivered to Mr. Freedman a check for the balance of the purchase price after assumption of an existing mortgage, and a letter assuming and agreeing to pay such existing mortgage. At this meeting I reiterated several times the importance of continuing the Appeal to obtain subdivision approval.

8. Mr. Freedman and I then immediately flew back to Massachusetts, and the following day Mr. Freedman went to the Registry of Deeds where the Deeds were recorded and Mr. Freedman then turned over the check and letter agreement to Mr. Patten's attorney.

9. The Summons in the above-entitled matter was not served on me personally, but was left at my office in Williamstown, Massachusetts.

  
Philip Grande

Subscribed and Sworn to  
before me this 22  
day of April, 1976.

  
Notary Public  
EJP 6-7-79



AFFIRMATION OF BENJAMIN J. GOLUB, ESQ., FOR  
PLAINTIFFS, IN OPPOSITION TO MOTION TO QUASH

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

ROBERT E. McDONNELL and  
ROBERT DeMARTINO,

Plaintiffs,

-against-

SOUTHERN VERMONT LAND COMPANY, INC.,  
HARRY S. PATTEN, MORTON FREEDMAN and  
PHILIP GRANDE,

Defendants.

No. 76 Civ. 371

AFFIRMATION

BENJAMIN J. GOLUB, attorney at law, duly admitted to  
practice before the Courts of the State of New York, affirms  
the following under penalties of perjury:

1. I represent the plaintiffs in the above captioned  
action.
2. Annexed hereto and made a part hereof as Exhibit "A"  
is the Marshal's return of service in the above entitled action  
indicating personal service.

WHEREFORE, it is respectfully requested that defendants'  
motion be denied.

5/  
BENJAMIN J. GOLUB

Affirmed at New York, New York  
this 27th day of April, 1976

# EXHIBIT "A" TO GOLUB AFFIRMATION - MARSHAL'S RETURN OF SERVICE

|                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                   |                                                                                                                                                                                                                                |                                                                   |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| <b>U.S. MARSHALS SERVICE<br/>PROCESS RECEIPT and RETURN</b>                                                                                                                                                                                                                                                                                                                                         |                                                                                                                   | INSTRUCTIONS: See "INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL" on the reverse of the last (1/0. 5) copy of this form. Please type or print legibly, insuring readability of all copies. Do not detach any copies. |                                                                   |
| PLAINTIFF<br><b>ROBERT E. MORTON</b>                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                   | COURT NUMBER<br><b>76 112371</b>                                                                                                                                                                                               |                                                                   |
| DEFENDANT<br><b>SOUTHERN VETERANS UNION</b>                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                   | TYPE OF WRIT(S)<br><b>WRIT OF HABEAS CORPUS</b>                                                                                                                                                                                |                                                                   |
| <b>SERVE</b><br><br><br><br><b>AT</b>                                                                                                                                                                                                                                                                                                                                                               | NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC. TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN            |                                                                                                                                                                                                                                | SEIZE OR CONDEMN                                                  |
|                                                                                                                                                                                                                                                                                                                                                                                                     | ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)<br><b>57 MAINT ST<br/>NORTH ADAMS MASS 01101</b> |                                                                                                                                                                                                                                |                                                                   |
| SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:                                                                                                                                                                                                                                                                                                                                              |                                                                                                                   | Number of writs to be served with his form-285<br><br>Number parties to be served in this case<br><br>Check for service on U.S.A.                                                                                              |                                                                   |
| <b>BENJAMIN J. GOLUB</b><br><b>10 E. 40TH ST</b><br><b>NUC NY 10016</b>                                                                                                                                                                                                                                                                                                                             |                                                                                                                   |                                                                                                                                                                                                                                |                                                                   |
|                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                   |                                                                                                                                                                                                                                |                                                                   |
| SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE:<br><b>IF DEFENDANT CANNOT BE LOCATED CONTACT ATTORNEY WHO WILL MEET MARSHAL TO HELP EFFECT SERVICE<br/>CALL 212-626-4300, MR GOLUB</b>                                                                                                                                                                            |                                                                                                                   |                                                                                                                                                                                                                                |                                                                   |
| Signature of Attorney or other Originator requesting service on behalf of:                                                                                                                                                                                                                                                                                                                          |                                                                                                                   | <input checked="" type="checkbox"/> PLAINTIFF<br><input type="checkbox"/> DEFENDANT                                                                                                                                            | TELEPHONE NUMBER<br><b>212-626-4300</b><br>DATE<br><b>2/26/76</b> |
| <b>SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE</b>                                                                                                                                                                                                                                                                                                                      |                                                                                                                   |                                                                                                                                                                                                                                |                                                                   |
| I acknowledge receipt for the total number of writs indicated (Sign only first USM 285 if more than one 285 is submitted)                                                                                                                                                                                                                                                                           | Total Writs                                                                                                       | District of Origin                                                                                                                                                                                                             | District to Serve                                                 |
|                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                   |                                                                                                                                                                                                                                |                                                                   |
| Signature of Authorized USMS Deputy or Clerk                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                   |                                                                                                                                                                                                                                | Date                                                              |
|                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                   |                                                                                                                                                                                                                                |                                                                   |
| I hereby certify and return that I <input checked="" type="checkbox"/> have personally served, <input type="checkbox"/> have legal evidence of service, <input type="checkbox"/> have executed as shown in "Remarks", the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below. |                                                                                                                   |                                                                                                                                                                                                                                |                                                                   |
| <input type="checkbox"/> I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above. (See remarks below)                                                                                                                                                                                                                                        |                                                                                                                   |                                                                                                                                                                                                                                |                                                                   |
| Name and title of individual served (if not shown above)                                                                                                                                                                                                                                                                                                                                            |                                                                                                                   | <input type="checkbox"/> A person of suitable age and discretion then residing in the defendant's usual place of abode.                                                                                                        |                                                                   |
| Address (complete only if different than shown above)                                                                                                                                                                                                                                                                                                                                               |                                                                                                                   | Date of Service                                                                                                                                                                                                                | Time                                                              |
|                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                   | <b>2/26/76</b>                                                                                                                                                                                                                 |                                                                   |
| Signature of U.S. Marshal or Deputy                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                   | Forwarding Fee                                                                                                                                                                                                                 | Service Fee                                                       |
|                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                   |                                                                                                                                                                                                                                |                                                                   |
|                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                   | Mileage (including detours)                                                                                                                                                                                                    | Total                                                             |
|                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                   |                                                                                                                                                                                                                                |                                                                   |
| REMARKS:<br><br><div style="text-align: right; font-size: large; font-family: cursive;">Done 9:60 Lindgren</div>                                                                                                                                                                                                                                                                                    |                                                                                                                   |                                                                                                                                                                                                                                |                                                                   |



AFFIDAVIT OF ROBERT DeMARTINO, FOR PLAINTIFFS,  
IN OPPOSITION TO MOTION TO QUASH

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

ROBERT E. McDONNELL and  
ROBERT DeMARTINO,

Plaintiffs,

-against-

SOUTHERN VERMONT LAND COMPANY, INC.:  
HARRY S. PATTEN, MORTON FREEDMAN :  
and PHILIP GRANDE, :

Defendants.

No. 76 CIV 371

AFFIDAVIT

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

ROBERT DeMARTINO, being duly sworn depose; and says:

1. I am one of the plaintiffs in the above captioned action.

2. I submit this affidavit in opposition to defendants' SOUTHERN VERMONT LAND COMPANY, INC., ("S.V.L.C."), HARRY S. PATTEN, ("PATTEN") and PHILIP GRANDE, ("GRANDE"), motion to dismiss this action because (as the defendants term it), it is "in the wrong District because the jurisdiction and venue of this Court" is improperly invoked.

3. At the time that the events complained of took place, (which are fully set forth in the complaint), and at the

time that the action was commenced, I was a resident of the Eastern District of New York, residing at Glenby Lane, Brookville, Long Island, New York.

4. I respectfully submit that jurisdiction and venue in the Eastern District of New York is entirely proper, as the Memorandum of Law prepared by my counsel more fully points out.

5. What the defendants neglect to point out to this Court in their papers, is the very important fact, alleged in the complaint, that the closing of title to the real property which is the subject of this litigation took place in the Eastern District of New York at LaGuardia Airport, where the defendants MORTON FREEDMAN and PHILIP GRANDE were personally present. It was also at that time that many of the false fraudulent and misleading statements were made.

6. The relationship between defendant GRANDE and defendant PATTEN and defendant S.V.L.C. is not fully known to your affirmant at this time, but upon information and belief, GRANDE was either a partner of defendant PATTEN and/or was, a stockholder and/or officer and director of defendant S.V.L.C.; defendant PATTEN was a stockholder and/or officer or director of S.V.L.C.

7. In any event, even if GRANDE was not a stockholder and/or officer of defendant S.V.L.C., and was not, in fact,

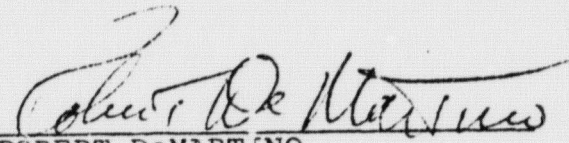


a partner of defendant PATTEN in the transaction, there can be no question but that defendant GRANDE, was acting as the real estate broker and therefor, agent of defendant PATTEN (the Seller), in the transaction compraired of and in that capacity, represented defendant S.V.L.C., and defendant PATTEN. He brought into the Eastern District, all of the documents required by PATTEN to be delivered to plaintiffs to complete the sale. Therefore, and as the Memorandum of Law more fully points out, these facts certainly place all defendants in the position of transacting business in the Eastern District of New York and committing tortious acts in New York and thus, subjecting them to jurisdiction of our Courts.

8. The meeting at LaGuardia Airport took place for two and one-half hours; checks were exchanged; the deed to the property was delivered; mortgages were signed, statements and representations as to acreage were given; false, fraudulent and misleading statements were given by defendants with regard to discrepancies relating to the closing statements, taxes and the amount of acreage were given at the meeting; legal advice, by defendant FREEDMAN, was given; closing statements were in part prepared and delivered; a legal fee to defendant FREEDMAN was paid. The contract for the purchase was a short one-half page document; the real "guts" of this transaction all took place in the Eastern District of New York. Moreover, many of the statements made at this meeting were relied upon by plaintiffs and this induced them to complete the purchase which is the subject matter of this litigation. Indeed the statements themselves form the basis for certain of the causes of action.

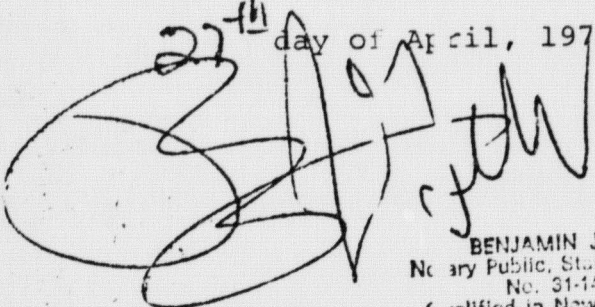
9. Based upon the foregoing facts, jurisdiction and venue are both proper in the United States District Court for the Eastern District of New York.

WHEREFORE, it is respectfully requested that defendants' motion be denied.

  
ROBERT DeMARTINO

Sworn to before me this

22<sup>nd</sup> day of April, 1976.



BENJAMIN J. GOLUB  
Notary Public, State of New York  
No. 31-1409475  
Qualified in New York County  
Term Expires March 30, 1977



AFFIDAVIT OF ROBERT McDONNELL, FOR PLAINTIFFS,  
IN OPPOSITION TO MOTION TO QUASH

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

ROBERT E. McDONNELL and  
ROBERT DeMARTINO,

plaintiffs,

-against-

SOUTHERN VERMONT LAND COMPANY, INC.,  
HARRY S. PATTEN, MORTON FREEDMAN,  
and PHILIP GRANDE,

defendants.

No. 76 Civl 371

AFFIDAVIT

STATE OF NEW YORK       )  
                              ) ss.:  
COUNTY OF NEW YORK     )

ROBERT McDONNELL, being duly sworn, deposes and says:

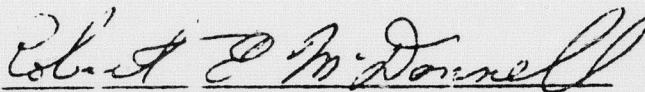
1. I am one of the plaintiffs in the above captioned action. I have read the affidavit of ROBERT DeMARTINO and concur with everything contained therein.

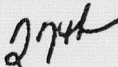
2. Moreover, defendant GRANDE, was, on a number of occasions (in addition to the time referred to in Mr. DeMartino's affidavit), present in New York to transact business.

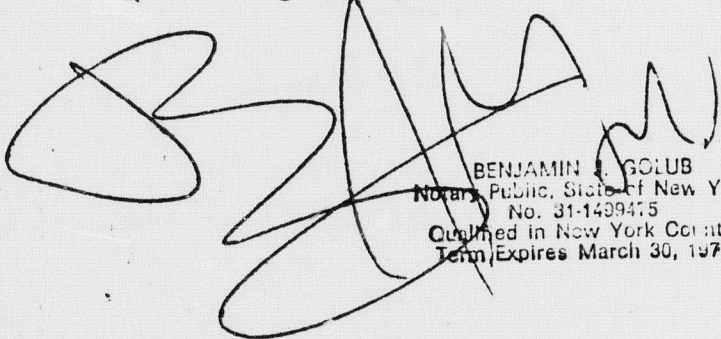
3. I was referred to defendant GRANDE by a Mr. Alfred Noto, a Broker on the New York Sugar Exchange. I am also a member of the New York Sugar Exchange. I recall GRANDE being present on a

number of occasions on the floor of the New York Sugar Exchange in New York at which time I had conversations with him regarding the property which is the subject matter of this action. He also had conversations with others with respect to the purchase of land in Massachusetts.

WHEREFORE, it is respectfully requested that defendants' motion be denied.

  
ROBERT MCDONNELL

Sworn to before me this  
 day of April, 1976

  
BENJAMIN J. GOLUB  
Notary Public, State of New York  
No. 31-1499475  
Qualified in New York County  
Term Expires March 30, 1977



REPLY AFFIDAVIT OF ROBERT E. McDONNELL, FOR  
PLAINTIFFS, IN OPPOSITION TO MOTION TO QUASH

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

ROBERT E. McDONNELL and  
ROBERT DeMARTINO,

Plaintiffs,

-against-

SOUTHERN VERMONT LAND COMPANY, INC.,  
HARRY S. PATTEN, MORTON FREEDMAN  
and PHILIP GRANDE,

Defendants.

No. 76 Civ. 371

REPLY  
AFFIDAVIT

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss.:

ROBERT E. McDONNELL, being duly sworn deposes and says:

1. I am one of the plaintiffs in the within action. I make this affidavit in reply to the affidavit of PHILIP GRANDE, sworn to April 22, 1976.

2. One wonders why Mr. Grande submitted the affidavit in that it totally supports the contention of the plaintiffs that this Court has in personam jurisdiction over the defendants.

3 Mr. Grande admits in paragraph "5" that the purchase agreement signed in Massachusetts was merely a "long hand" agree-

ment, without counsel present. This further reinforces the position of the plaintiffs that the essential aspects of this purchase occurred in New York when the closing took place.

4. The fact that the came to New York to accommodate me is totally irrelevant. The fact is that GRANDE admits in his papers at paragraph "7" the work that was done in the Eastern District of New York. This was not a mere formality of sitting down at a table and signing an agreement that had already been agreed to in all of its terms with the only event to take place in the Eastern District being the formality of signing. Rather, GRANDE admits that substantial work was done in connection with this closing in the Eastern District.

5. Moreover, GRANDE came into New York on a number of occasions to transact business here with other persons.

6. Under the case law as set forth in the Memorandum of Law, the admissions in GRANDE's affidavit alone, without more, are enough to confer in personam jurisdiction upon him and upon Mr. Freedman, (who was also given a check for counsel fees at the closing), in the Eastern District of New York.

7. Moreover GRANDE admits in his papers that he was acting in his capacity as agent for defendant PATTEN, and thus, this Court also has jurisdiction over PATTEN as well.

8. If there were any question about the fact that there was an agency relationship, it is totally erased by GRANDE's admissions in his affidavit as regards his relation with PATTEN. Moreover, the fact that the very same attorney represents PATTEN and GRANDE clearly indicates to this Court that PATTEN



is not even raising the issue of GRANDE's status as his agent. Otherwise, on a motion such of this sort, it would be totally improper for the same counsel to represent both parties if in fact, PATTEN sought to indicate to this Court that GRANDE was not his agent. Thus, the finding of jurisdiction over GRANDE establishes jurisdiction over PATTEN.

WHEREFORE, defendants' motion should be denied in its entirety.

S/  
\_\_\_\_\_  
ROBERT E. McDONNELL

Sworn to before me this

4th day of May, 1976.

BENJAMIN J. GOLUB  
Notary Public, State of New York  
No. 31-1499475  
Qualified in New York County  
Term Expires March 30, 1977

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

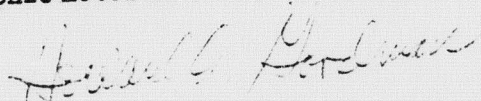
-----X  
ROBERT De MARTINO, X  
Plaintiff, X  
-against- X 76C371  
SOUTHERN VERMONT LAND COMPANY, X  
ET AL., X  
Defendant. X  
-----X

United States Courthouse  
Brooklyn, New York  
December 3, 1976  
3 o'clock P.M.

B E F O R E :

HON. JACOB MISCHLER, U.S.D.J.

I hereby certify that the foregoing is  
a true and accurate transcript from my  
stenographic notes in this proceeding.



Official Court Reporter  
U. S. District Court

Howard Goodman,  
Acting Official Court Reporter



## A P P E A R A N C E S :

For Plaintiff:

B. J. Golub, Esq.

For Defendant Southern Vermont:

Lappin, Rosen, Goldberg, Slavet,

Levenson & Wekstein, Esqs.

BY: James Rosen, Esq.

For Defendant Freedman:

Viscardi & Stienman, Esqs.,

BY: Paul Viscardi, Esq.

THE CLERK: McDonnell and De Martino vs.  
Southern Vermont et al.

THE COURT: Who will proceed?

MR. ROSEN: This is an Evidentiary Hearing on  
my motion to dismiss and I believe that the burden of  
proof is on me, your Honor and therefore we'll call  
Mr. Philip Grande.

P H I L I P      G R A N D E, called as a witness, on behalf  
on the defendant, having been first duly  
sworn by the Clerk of the Court, was examined  
and testified as follows:

MR. ROSEN: May I proceed, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. ROSEN:

Q      Mr. Grande, where do you reside?

A      In Williamston, Massachusetts.

Q      What is your address, Mr. Grande?

A      State Road, Williamston.

Q      How long have you lived in Williamston?

A      About ten years.

Q      Are you the defendant, Philip Grande in this  
case?

A      Yes.



Q Are you an officer of Southern Vermont Land Company?

A No, I am not.

Q On July 6th, 1973, were you an officer of Southern Vermont Land Company?

A No, I wasn't.

Q In July of 1973, did you have an office in New York City?

A No, never.

Q Referring to this case, when did you first meet the Plaintiffs in this case, in this action?

A In July, at my office in Williamston.

Q In 1973?

A Yes.

Q Would you describe the circumstances of that meeting and where it occurred?

A Well, it was in Williamston and they just walked into the office and they said that they were on a trip going north to look at some land and then we started talking about land in our area.

Q Did they indicate that they were interested in buying land in the area of Williamston?

A They were interested in land in general. That's how it started.

Q And, if you know, how did they happen to walk into your office?

A They knew a fellow by the name of Joseph Ando, who I knew very well from New York. They either worked together on the exchange -- they knew each other.

Q Now, your office is in Williamston?

A Yes.

Q And, you have a real estate brokerage office?

A Yes, sir.

Q And, you are a licensed real estate broker, are you not?

A Yes.

Q Now, on July 6th, 1973, were you acting as an real estate broker for Harry S. Patten on certain land in Hancock, Vermont?

A Yes.

Q And, did you advise the Plaintiffs that you were so acting as a broker?

A Yes.

Q In response to their inquiring as to whether or not you had any land that they could look at, did you show them some land?

MR. GOLUB: I know that this is only a hearing and there is no jury present but I would



appreciate it a little bit if he doesn't lead the witness down the road quite so far.

THE COURT: As a matter of fact, I think the leading questions are very helpful in reducing the trial time. When it gets to the critical issues then don't lead.

MR. ROSEN: Yes, your Honor.

Would you read the last question back, please?

(Whereupon, the Reporter read back the last question.)

A Yes.

Q And, would you tell us where the land was?

A It was in Hancock, Massachusetts.

Q And, did they express any interest in purchasing the land?

A Yes, they did.

Q What happened as a result?

A I don't understand what you mean? How did they go about purchasing it?

Q Did they determine to purchase it?

A Yes. After they viewed the land they decided to purchase the land and I decided to sell it to them.

Q Did you personally show them the land?

A Yes, I did.

Q Did you walk over the land with them?

A Two things happened. One is that we brought them to the land and showed them where the area of the land was and we also flew them over the land.

Q I see. And, was a purchase agreement thereby entered into?

A Yes.

Q And, was that the same day?

A Yes, it was.

Q Now, I show you an instrument entitled Agreement of Purchase and I ask you if this is the agreement which was signed at the time?

A Yes.

MR. ROSEN: May I enter this as Exhibit 1, your Honor?

THE COURT: Any objection?

MR. GOLUB: I don't have any objection.

THE CLERK: So marked as Defendant's Exhibit A in evidence in this hearing.

BY MR. ROSEN:

Q What was the price of the land in question, if you know?

A I am not sure at this point. I don't recall.  
\$160,000.00.



Q Was there a deposit made at that time?

A Yes, there was.

Q How much was that deposit?

A \$16,000.00.

Q Was it given to you?

A It was put in escrow.

Q I see. After the agreement was signed what happened then?

A After the agreement was signed then we just discussed about closing and at that point we started to talk about attorneys and I mentioned to them that they could get any attorney that they wished to, but they might want to use an attorney in the area. I mentioned one attorney in particular, who Joseph Ando was acquainted with, if they wanted to use him or there was Attorney Freedman but they didn't have to do that, if they didn't want to.

Q Did they determine to use Attorney Freedman at that time?

A They said that they would use him. They had no objection.

Q And, as a consequence, did you call Attorney Freedman or did they, or how was the matter brought to Attorney Freedman's attention?

A Well, I think, that they had no arrangement who

they would use. I said, well, I'll get in touch with Attorney Freedman and what happened after that is that Attorney Freedman called them.

Q At some date subsequent to July 6th of 1973, did Attorney Freedman contact the Plaintiffs with reference to this sale?

A Yes, as far as -- I don't quite understand what you mean?

Q At some time subsequent to July 6th of 1973, were you advised by Attorney Freedman that he contacted these people?

A After I called Attorney Freedman he was supposed to call these people. The next thing I knew Attorney Freedman got in touch with me and said everything was all set and you can go ahead and close.

Q What did you do then?

A At that point, I believe I called one of the two -- I don't know which one. I called and mentioned everything was all set and I could come down or they could come up and close or whatever they wanted to do. They said that they couldn't come up because they were busy at the time.

I said that if it is inconvenient for them I'll be happy to come down to New York by airplane. I said that I would get ahold of Attorney Freedman and see, if he could bring all the



paper work and do whatever he had to do, whatever had to be done to have the closing up here at the registry in Massachusetts.

Q In fact, did that happen, did you come to New York thereafter?

A Yes.

Q And, did you meet the Plaintiffs in this matter?

A Yes.

Q Where did you meet?

A At the airport, I think it was Kennedy or no -- LaGuardia, I think it was LaGuardia.

Q How did you come to New York, was it with Attorney Freedman?

A Yes, I did.

Q How did you come, did you drive?

A No, private plane.

Q Was that a chartered plane?

A We chartered a plane.

THE COURT: I don't think there is any disagreement as to that.

MR. ROSEN: That is correct.

BY MR. ROSEN:

Q Do you recall where at LaGuardia Airport this meeting took place?

A At a restaurant.

Q And, what happened at the meeting as you recall?

A Well, Attorney Freedman brought some papers down and they had to be signed and that's all I know. He brought some papers down. I am not sure what they were. I am not sure what the papers were and he had to sign them. Whatever, they had to sign what he gave them and they had to give Attorney Freedman a check to bring back to Massachusetts with the papers so they could have the closing back in Massachusetts.

THE COURT: Did they give you the check or did they give it to Attorney Freedman?

THE WITNESS: They gave their check, your Honor -- the deed was back in Williamston. They gave everything to Attorney Freedman to bring to the closing back in Massachusetts.

THE COURT: Was the check for the purchase price?

THE WITNESS: I am not sure. I am not aware whether it was, your Honor. They were assuming some part of the mortgage at one point.

THE COURT: Did it represent the cash over the existing loans?

THE WITNESS: I think so but I am not sure. At that point, again that was being taken care of by



Attorney Freedman. I really wasn't too sure.

THE COURT: How long did this meeting take?

THE WITNESS: We were probably sitting and talking and doing whatever we were doing, I would say, 35, 45 minutes.

BY MR. ROSEN:

Q And, after the meeting what happened, what did you and Mr. Freedman do; did you fly back to Massachusetts then?

A Yes. Attorney Freedman got together with the principal person, Mr. Patten so they could have the closing.

Q Was there any deed?

THE COURT: The principal person was Mr. Patten?

THE WITNESS: Mr. Freedman was their attorney and he was to get together with Mr. Patten's attorney in Massachusetts and they were waiting for Mr. Freedman to bring the papers to have the closing in Massachusetts.

MR. GOLUB: Your Honor, I am going to object to the characterization.

THE COURT: All right. I'll disregard it.

Do you know him to be Mr. Patten's -- did you know the other gentleman to be Mr. Patten's attorney?

THE WITNESS: Did I? Yes.

THE COURT: You knew who his attorney was?

THE WITNESS: Yes.

THE COURT: What was his attorney's name?

THE WITNESS: Frank Mann. (phonetic)

THE COURT: Do you dispute that fact?

MR. GOLUB: I'm disputing the fact that he said that he closed in Massachusetts.

THE COURT: Did you say that the title was closed at that time?

THE WITNESS: I am saying, that when he asked me what happened after we were finished, I said that Mr. Freedman took all the paper work with the check and we flew back to Massachusetts and we were suppose to meet with Mr. Patten's attorney so they could go to the Registry and take care of the closing at the Registry and have the closing.

BY MR. ROSEN:

Q That meeting at LaGuardia Airport, that was the only meeting that you had in New York City?

A Yes, sir.

Q That was with the Plaintiff prior to the recording of this deed?

A Yes.

Q And, to your knowledge was the deed recorded?

A Yes.



Q To your knowledge, was a consideration paid over to Mr. Patten?

A Yes.

Q To your knowledge, did Mr. Patten ever meet the Plaintiffs, while this was taking place?

A No, I don't believe so.

MR. ROSEN: I have no further questions.

THE COURT: Are there any questions by defendant's counsel?

MR. VISCARDI: I have no questions on behalf of Mr. Freedman.

THE COURT: Mr. Golub, do you have any questions?

MR. GOLUB: Yes, your Honor.

CROSS-EXAMINATION

BY MR. GOLUB:

Q Mr. Grande, you say that Mr. McDonnell and Mr. De Martino came up unannounced; is that correct?

A Well, when they came to my office they just walked in.

Q You had no idea that they were coming?

A I knew at some point that they would be visiting us, at one point because Joseph Ando, Mr. Ando called.

Q Did Mr. Ando tell you that these two people were

on the sugar exchange and that they were interested in purchasing some land in Massachusetts; is that correct?

A Yes.

Q In fact, didn't you have a conversation with Mr. Ando in which you were talking about a specific piece of real estate that they might be interested in; is that correct?

A Yes.

Q Now, could you tell us a little bit about that specific piece of real estate that you were talking about?

A Yes. Mr. Patten hired me to sell acreage -- land with a house on it in Hancock, Massachusetts and it was raw land that we were dealing with.

Q Now, you say that it was a specific piece of acreage that you and Mr. Ando discussed; is that correct?

A Yes.

Q You, in an affidavit, submitted in connection with this case, Paragraph 2, in fact stated that they came into your office unannounced and unsolicited, that's not quite correct; is it?

A I didn't know when they were going to come in. I wasn't sitting there waiting for them.

Q Now, you had no definite appointment with them?

A No.

Q But you knew that they were coming and that they



were interested in a particular parcel?

A No.

Q You knew ahead of time that they would be coming?

A I didn't know what day or what they would be interested in seeing in land. They said that they were going up north and they told me because it was convenient at the time -- I didn't know they were coming at that time and day.

Q Now, you have submitted this affidavit, this is your affidavit and reading part of Paragraph 4, it says and I quote, "In fact, I made it quite clear to them that I was making no representations regarding acreage on the buy and sell agreement since neither the survey nor the subdivision plan contain any reference to acreage." Did you make that statement?

A Yes.

Q That statement is correct?

A That is correct.

Q That is your testimony here today, that you never discussed acreage of this block with either Mr. McDonnell or Mr. De Martino?

THE COURT: Aren't we going into the merits?

MR. GOLUB: Well, your Honor, I'm coming to that because it is part of what was said in New York. We are going to connect it up.

A The parcel that they were looking at was, I assume to be

300 acres of land located in Hancock, Massachusetts. That is what I was showing them.

Q You told them it was 300 acres; is that correct?

A I told them that it was suppose to be 300 acres and we had a map in front of us and the representation on the map as far as the acreage was concerned -- I wasn't positive as to the acreage. I was told by my principal it was 300 acres or so. Many lots.

When they were looking at the land, the acreage was not a big concern. We were talking about the number of lots there. They knew that they would get 46 parcels, whether it was one acre or five acres because the verifier didn't have it on there. I couldn't put down 300 acres.

Q Did you ever discuss that phase of the transaction for the land, that being the price of \$400.00 an acre for 300 acres?

MR. ROSEN: I object, your Honor. I understand that this is an Evidentiary Hearing to determine whether or not there was minimal contact with New York. I have let it go this far because I thought that it was related to events in New York and now I think it is going far afield.

THE COURT: I think that you are going to the merits.



MR. GOLUB: I'm going to take one or two more questions along this line.

BY MR. GOLUB:

Q Where were these discussions held?

A They were discussions held in Massachusetts when they were at my office and when we signed the buy and sell agreement.

Q Subject to connecting this up, when you were in New York City, did you in fact have a conversation with them in which it was discussed and in which it was related to them that they were buying this property on the basis of \$400.00 an acre for 300 acres?

A Yes. There was mentioned 300 acres at the price of four to five hundred dollars an acre. What value they wanted to put on it -- if they want to say the house was worth \$8,000.00 or if the house was worth \$10,000.00 -- what the house would be worth? It was just a number that we were using. You can use any number.

Q So, you are telling me today that the acreage was not a consideration of the purchase of this transaction?

A The acreage wasn't the main point of them buying the land.

Q That was never a basic understanding, that it was \$400.00 for 300 acres?

A No, it was never sold to them on that basis, of \$400.00 an acre for 300 acres. That is was \$400.00 an acre and that's the only reason why they sought to buy it.

Q Did you tell them, did you ever say to Joe Ando, Mr. Ando, in calling him, and say that these guys got a deal because they bought 300 acres at \$400.00 an acre; did you ever tell Mr. Ando that?

A I told Joe Ando that it was \$400.00 an acre. If it was 300 acres that it would be a terrific deal.

MR. ROSEN: May I again express my objection to this line of questioning?

THE COURT: This isn't an Examination Before Trial. Now, you have got to go on to something else.

BY MR. GOLUB:

Q Mr. Grande, you have in fact done business with other people on the sugar exchange; is that correct?

MR. ROSEN: Your Honor, what period of time are we talking about?

MR. GOLUB: At or about the time that Mr. McDonnell and Mr. De Martino purchased the property.

BY MR. GOLUB:

Q You sold property to other brokers on the sugar exchange; is that correct?



A Yes.

Q Also to Joseph Ando?

A Yes.

Q How about the name La Roche, does that mean anything to you?

A I am not sure. I think after or before --

Q Did you ever take a check from a Mr. La Roche on the floor of the sugar exchange for him to make a purchase of land in Massachusetts?

A Yes, I did.

Q How many times have you been down in New York City since, on or about July of 1973, to negotiate the purchase of land?

MR. ROSEN: Objection, your Honor.

THE COURT: I'm going to allow it. He's trying to show he did business in New York.

MR. ROSEN: Even after the event took place?

THE COURT: What did you do about Mr. Patten? All of that land was not sold for Mr. Patten; you represented other sellers?

THE WITNESS: Yes.

MR. GOLUB: Well, he's a defendant in this as well.

Well, your Honor, to point out in the C.P.L.R.,

I am trying to show a continuing course of conduct in New York, and he has been doing business here. It's 3023B, if I am not mistaken.

THE COURT: At the time this took place with them, that's when he first started in business. Probably, this was his second client that he had in New York.

BY MR. GOLUB:

Q What was your relationship with Mr. Patten in this particular deal?

A I was his agent.

Q You were never a partner of Mr. Patten in real estate transactions?

A Yes.

Q When was that?

A I became partners with Mr. Patten after this transaction, we became partners.

Q What is Southern Vermont?

A Southern Vermont is a land company.

Q Do you know what Mr. Patten's connection is with the company?

A Now?

Q Then, in July of 1973?

A He was a hundred percent stockholder in the



company.

Q You, in any event sometime after July of 1973 became a stockholder?

A I think it was around July, towards the end of July.

Q Towards the end of the month of July of 1973?

A That is correct.

Q And, he is still a stockholder of Southern Vermont Land Company?

A No, I don't know.

Q Now, did you tell Mr. McDonnell and Mr. De Martino when you met them in Massachusetts, that you in fact for their convenience would come to New York to close the transaction?

A I don't recall if it was -- I don't believe in Williamston. I believe that there was an attorney who did the title search and after that was done, that's when I called them and either they were busy and they couldn't come up -- I'm not sure exactly what the conversation was but I told them to answer your last question, I got Attorney Freedman, their attorney to come down and get their papers signed without their being present in Massachusetts.

Q They never met Attorney Freedman prior to the LaGuardia meeting, as far as you know?

A As far as I know, no.

Q You contacted Attorney Freedman on their behalf; is that correct?

A Yes.

Q And, you spoke directly with Attorney Freedman?

A Yes.

Q Did you ever mention the fact that there was 300 acres involved in this transaction to Mr. Freedman?

MR. ROSEN: Objection.

THE COURT: The objection is sustained.

BY MR. GOLUB:

Q How many times did you talk to Mr. Freedman between the time that you, they came into your office and the time that you went down to LaGuardia Airport?

A I am not sure of the number of times. I don't know. We just usually call these people. I don't know how many times it would be.

Q When you got down to LaGuardia Airport on that day, on August 13th, you came down with Mr. Freedman?

A Yes.

Q And, Mr. Freedman had all the papers to close the title to the transaction?

A Yes.

Q Did Mr. Freedman have the deed with him?

A No, I think he had a copy.



Q Did he have a closing statement with him?

A I am not sure. I didn't get involved in the paper work.

Q Did he give a bill to them at that time?

A As I say, I don't know.

Q Did he assign an assumption of the mortgage?

A I am not sure.

Q Did they sign an assumption of the note Mr. Patten had?

A I am not sure if there was any mention of it. All I know is that papers were brought down. I don't know what each paper said.

Q Did you have a conversation with Mr. McDonnell and Mr. De Martino about the acreage of the property when you were down at the LaGuardia meeting?

A I can't recall. I don't believe that we got into that because the attorney was going over whatever he was doing with the paper work.

Q Do you remember having a conversation with myself and a Mr. Leonard Rosen in the Pittsfield Airport and then again at Kennedy Airport sometime in June of 1975, do you remember that?

MR. ROSEN: Objection.

A Yes.

MR. ROSEN: I don't know what the materiality is?

MR. GOLUB: Subject to connection.

I just want to ask one more question, --

MR. ROSEN: The one more question may be improper.

MR. GOLUB: If it is improper I'll wait and let the Judge rule on it.

BY MR. GOLUB:

Q The question is: Did you tell myself and Mr. Rosen that the acreage was discussed at the meeting at LaGuardia Airport?

A I don't recall that.

THE COURT: That's an answer.

BY MR. GOLUB:

Q Now, when you got the check in Massachusetts for \$16,000.00 as a down payment, you said that you put it in an escrow account; is that correct?

A Yes.

Q You didn't turn that over to Mr. Patten, did you?

A I am not sure if it went into an escrow account or whether it went to the attorney. I know that it didn't go in my personal funds so I know it either went into the escrow account or to the attorney.



MR. GOLUB: I have no further questions.

MR. VISCARDI: No questions.

MR. ROSEN: I have no questions on redirect.

THE COURT: May I see the contract, please?

(Handed.)

THE COURT: Do you have any more witnesses?

MR. ROSEN: We have no more witnesses.

MR. GOLUB: Your Honor, we understood from Mr. Viscardi that Mr. Freedman would be produced without the service of subpoena. He apparently called yesterday and said that he wasn't able to be here today and I am calling him as a witness.

THE COURT: That's Mr. Freedman -- wasn't he at counsel table?

MR. VISCARDI: Mr. Freedman is not here.

MR. GOLUB: He is not here and I am willing to proceed. I don't know how to handle it, --

THE COURT: You'll reserve your rights if you think it is important that Mr. Freedman testifies, as to what he has to say about these transactions.

MR. GOLUB: Can I go forward with my witnesses. I have them here.

THE COURT: Suppose you go forward with your witnesses.

MR. GOLUB: I'm going to call Mr. Robert  
De Martino.

R O B E R T     D e M A R T I N O, called as a witness, on  
behalf of the Plaintiff, having been first duly  
sworn by the Clerk of the Court, was examined  
and testified as follows:

DIRECT EXAMINATION

BY MR. GOLUB:

Q     Mr. De Martino, you are one of the Plaintiffs  
in this action; is that correct?

A     Yes, I am.

Q     Could you tell us by whom you are employed?

A     I am employed as a commodity broker.

Q     Did there come a time in the spring of 1973,  
when you were involved in the purchase of some land in  
Massachusetts?

A     Yes.

Q     Could you tell us how that came about?

A     Well, I heard from one of my fellow brokers on  
the coffee and sugar exchange, Mr. Joseph Ando --

MR. ROSEN: If your Honor please, this is  
hearsay, what Mr. De Martino heard.

THE COURT: I'll let him continue.

A     (continuing) I heard -- my partner Mr. McDonnell and I



bought some land from Mr. Grande. I was told by Mr. Ando that there was 300 acres for sale and that he could not handle it himself. He was fully committed at the time and would I be interested, me and Mr. McDonnell and we told him that we would be interested, so he said, "Will you go up and take a look at it?" and I said, "Yes, we would."

Q Now, did you have an appointment with Mr. Grande before you went there?

A My recollection is yes, we had.

Q And, what happened when you got up to Massachusetts?

A We went to his -- I don't know whether it was his office or his father's office. Actually, we called the real estate office to tell them that we were there, and we were told to come over to the real estate office.

Q What happened when you met him at the real estate office?

A He told us that he had land. 300 acres at \$400.00 an acre and that it was fantastic. Would we like to look at it? We said that's what we are here for and we would like to go and look at it. At that point, we went to the airport and he took us over the land by airplane. After we came down we went back to the office and then we toured the land by car. Whether he used his own car or another car I

don't know and we went back to look at the land in person.

Q After that, what did you do?

A Well, after that Mr. McDonnell and myself decided that we would take the land at that price. Well, at that point Mr. Grande said there was a house which he showed us, while we were there and it didn't come with the land. He advised us to take it as a separate parcel, the house. I believe that there were 3 acres additional. After that Mr. Donnell and myself decided that we would take it and we went back to the office and signed an agreement.

MR. GOLUB: Do you have the agreement,  
your Honor?

(Handed.)

BY MR. GOLUB:

Q Is that the original of the agreement that you signed, do you want to take a look at it?

A Yes. It looks like it, yes.

Q Now, after you signed that piece of paper, did you have any further conversations with respect to the closing on the property?

A Well, yes. He mentioned that he could arrange for us to get a lawyer in that area and that it was for our convenience. He also said if we could not get up there for the closing he would definitely come down here and we said we



would greatly appreciate it, as he was accustomed at the time of coming into New York quite frequently.

Q Did he mention the name of any lawyer or did he just say he would get you a lawyer?

A I don't recollect.

Q When was the next time you heard from anybody in connection with this piece of property?

A The next I remember, would be learning from Mr. Grande, saying that he was coming down and we were ready for the closing at LaGuardia Airport.

Q Now, did you meet at LaGuardia Airport for the closing?

A Yes.

Q Who was present at the meeting at LaGuardia Airport?

A Mr. McDonnell, myself, Mr. Grande, Mr. Freedman and later at the meeting my secretary, Miss Barbara Lee.

Q When you got to that meeting, did you have a conversation with Mr. Freedman with respect to this transaction?

A Definitely. We sat down and we had lunch and we ordered lunch and we went over the whole deal again.

Q When you say you went over the whole deal again, could you tell us what conversation you had with Mr. Freedman and Mr. Grande?

A Well, we discussed the amount of the acreage and how much per acre and I brought up the question, well, how about a title search on the acreage? And I was informed at that time that Massachusetts did not have such a title. It was not a title state. I spoke with Mr. Freedman and he said that it guaranteed the acreage on the deed.

Q Did Mr. Grande say anything to you about the acreage in the conversation with him?

MR. ROSEN: May I repeat my earlier objection?

THE COURT: All right. Go ahead.

A Yes. I went over this same thing, 300 acres at \$400.00 an acre. In our discussions I saw that the papers were made out in the sum of \$125,000.00 and I questioned that fact because, for the simple reason that 300 acres times \$400.00 an acre does not equal \$125,000.00.

Apparently, I didn't know that they did that basing the figure on not being interested in the house. The total with the house and the acreage, we knew it was \$400.00 an acre and the total bill with the house and the acreage was \$160,000.00 as per agreement.

Q Did Mr. Freedman, -- by the way, had you ever met Attorney Freedman before you met him at LaGuardia Airport?

A No.



Q Did you ever talk to him before you met him at LaGuardia Airport?

A No, I did not.

Q Now, did he bring down any documentation, with him at that time?

A Yes.

Q I show you this document and ask you whether or not he brought these documents down?

A Yes, he did.

MR. GOLUB: I am going to offer them.

THE COURT: Show them to Mr. Rosen.

MR. ROSEN: I have no objection to the documents.

THE COURT: Mark them as Plaintiff's Exhibits in evidence in this hearing.

(Whereupon, the Clerk received and marked Plaintiff's Exhibit 1 for Identification.)

BY MR. GOLUB:

Q Now, can you tell me what this is?

A These are the deeds on two parcels of land. One I imagine is for the house and the other one for the raw acreage.

Q Now, were those given to you at the closing; is that correct?

A Yes.

Q I believe that you explained that they had to be recorded and so they were shown to you and then they were taken back?

A Yes.

Q Was there any other documentation that was given to you at the LaGuardia meeting?

A Yes, a lot of papers.

THE COURT: Well, they just showed those to you and then they took them back?

THE WITNESS: Yes.

BY MR. GOLUB:

Q I'm going to show you this -- I'm going to ask you, did he show you the original of these documents at the time that you were at the closing?

A Yes.

Q And, didn't you sign them at LaGuardia Airport?

A Yes.

MR. GOLUB: I'm going to offer these.

MR. ROSEN: No objection.

THE COURT: Let it be marked as Plaintiff's Exhibit 2 in evidence.

(Whereupon, the Clerk received and marked Plaintiff's Exhibit 2 for this hearing.)



BY MR. GOLUB:

Q Could you tell us what this is?

A Yes, it is the loan agreement, assumption of the loan.

Q By which you assumed that Mr. Patten had the existing mortgages on the property; is that correct?

A Yes.

Q Now, I am going to show you this document. I am going to ask you if you have seen the original of this and whether you signed this at the closing?

A Yes. This is the mortgage agreement.

MR. GOLUB: I'm going to offer it.

THE CLERK: So marked as Plaintiff's Exhibit 3 in evidence in this hearing.

BY MR. GOLUB:

Q Could you tell me what this is?

A A mortgage.

MR. GOLUB: May I hand it up to your Honor?

THE COURT: If you have seen one you have seen them all.

BY MR. GOLUB:

Q Now, I am going to show you this document and I am going to ask you if you can identify it; just tell me whether you can or whether you can not identify it?

A Yes.

MR. GOLUB: I'm going to offer this.

BY MR. GOLUB:

Q Could you tell us what this is?

A It's a drawing by Attorney Freedman giving the layout of the land. Which property was ours and which wasn't.

MR. ROSEN: What bearing does this have?

I have no objection to it.

THE COURT: This was delivered to you at LaGuardia Airport?

THE WITNESS: Yes, sir.

BY MR. GOLUB:

Q You got it delivered at LaGuardia Airport?

A Yes, sir.

Q You had never seen it before?

A Yes, sir.

THE COURT: I understand that there is no objection to it, so mark it as Plaintiff's Exhibit 4 for the hearing.

(Whereupon, the Clerk received and marked Plaintiff's Exhibit 4.)

A This is a representation as to the acreage. It just shows one course of 630 feet. It really shows the dimensions around the house, I suppose.



Q Mr. De Martino, I'm going to show you -- withdrawn. Did you ever have any conversation with Mr. Freedman with respect to this piece of paper, that drawing?

A Just basically that it didn't show anything except the layout of the land. Except, it didn't show the mountain that was on the back of the property. It did show there was a house in the middle of the property.

Q Now, Mr. Freedman showed you the deed and the mortgage and assumption of the note -- did Mr. Freedman explain to you, did you have a conversation with him at LaGuardia Airport, did you go over these documents?

A Yes. He told us what they were. As far as going over everything basically, he said trust him. He was our attorney and he said that we should trust him and we went over it briefly and we signed it.

Q I am going to show you this document and ask you if you can identify it and tell us what it is?

A Yes. It is the letter he gave us basically telling us what he brought down with him and what we were signing and what was there.

Q Did you get this at the closing, was it delivered to you at LaGuardia Airport?

A Yes.

Q Was there a conversation with respect to it?

A Well, here's another paper where there apparently was no mention of the acreage. Again, it was brought up as it was brought up before by Mr. McDonnell and again it was brought up as to where did it say 300 acres and we were instructed by Mr. Grande that it was 300 acres.

MR. ROSEN: I don't know what is apparent. If this were an open trial I would ask that the answer be stricken.

THE COURT: There is no jury here.

MR. GOLUB: I am going to offer this.

THE COURT: Any objection?

MR. ROSEN: I think your Honor, if we were on trial I would object to it. Though, I will allow it to be marked for Identification. It seems that it wouldn't make any difference if the Court would agree.

THE CLERK: Marked as Plaintiff's Exhibit 5 in evidence.

BY MR. GOLUB:

Q Now, the letter was hand-delivered to you at LaGuardia Airport; is that correct?

A Yes.

Q Now, I am going to show you this document and I am going to ask you what it is and to please identify it for us?



A Yes, it is a tax adjustment schedule.

Q Did you get it at the closing?

A Yes.

MR. GOLUB: I am going to offer it.

THE COURT: You call it a closing. Did you get it at LaGuardia, because you object to it as I understand it?

BY MR. GOLUB:

Q You got it at LaGuardia Airport?

A No, I saw it.

Q Now, had you ever seen it before that time?

A No, I never saw it before.

THE COURT: Mark it.

THE CLERK: Marked as Plaintiff's Exhibit 6 in evidence.

BY MR. GOLUB:

Q Mr. De Martino, do you recall any conversation about this tax adjustment schedule that you had at the time?

A Yes. Especially this one, where I mentioned before, we asked about the 300 acres -- where it said that there were two parcels of land which added up to approximately 180 acres --

MR. ROSEN: I object, your Honor.

THE COURT: I'll allow it.

A (continuing) we were told at the time that the raw acreage, when the access the raw acreage, it's only an estimate, and the fact that it says 180 acres didn't mean 180 acres. Again, we were assured by Mr. Grande that it was 300 acres.

THE COURT: Now, the tax schedule was given to you at LaGuardia Airport? \

THE WITNESS: Yes.

BY MR. GOLUB:

Q That was the first time that you were aware that there might be a problem, that the acreage indeed might not be 300?

A It was always assumed that the acreage throughout was 300. I noticed in this area, the lower part here was less but I still believe that it wasn't anything other than the 300 acres.

THE COURT: Was that the first land that you ever bought?

THE WITNESS: My first except for my home.

THE COURT: I mean raw acreage?

THE WITNESS: Yes.

THE COURT: How much longer will you be, Mr. Golub?

MR. GOLUB: Not much longer.

BY MR. GOLUB:



Q Now, Mr. De Martino, I'm going to show you this and I am going to ask you if you can identify it?

A Yes.

Q What is it?

A It's a closing statement.

MR. GOLUB: I'm going to offer it, your Honor.

THE COURT: Were all these documents given to you at LaGuardia Airport at that time?

THE WITNESS: Yes.

THE COURT: Have you got any other documents that you want him to identify?

MR. GOLUB: Can I put them all in at once?

THE COURT: Yes.

BY MR. GOLUB:

Q Did you get -- I am going to show you these other items and I am going to ask you if you can identify them and tell us what they are?

A Well, this is Attorney Freedman's bill. This I just identified is the closing statement and the preliminary title option and those were all delivered to us at LaGuardia Airport.

MR. GOLUB: I am going to offer them, your Honor.

THE COURT: Any objection?

MR. ROSEN: No objection, your Honor.

THE CLERK: The three documents so marked  
as Plaintiff's Exhibit 7 in evidence.

BY MR. GOLUB:

Q Now, did you pay Mr. Freedman?

MR. VISCARDI: It speaks for itself. It  
says on it what it is for.

THE COURT: Let me see it.

(Whereupon, the Court is reading the  
document.)

BY MR. GOLUB:

Q Did you pay Mr. Grande, did you?

A Yes, we did.

Q How did you pay him?

A I gave him a check.

Q Did you also write out a check for the balance  
due at the closing of \$80,462.40?

A Yes.

Q Who was the check made payable to?

A I don't remember.

Q Do you remember whether it was to Mr. Patten,  
Southern Vermont or Grande?

A I don't really remember who it was made payable to.



Q Did there ever come a time that you had it delivered, a check to that amount?

A Our secretary came up from New York with a check -- I don't know whether it was certified or not. She came up with a check and we turned it over to Mr. Grande.

Q Now, did you ever see Mr. Freedman again?

A No, I haven't.

MR. GOLUB: I have no further questions of this witness.

THE COURT: Mr. Rosen?

MR. ROSEN: Yes, your Honor.

CROSS-EXAMINATION

BY MR. ROSEN:

Q Mr. De Martino, Plaintiff's Exhibit 1, which you testified about, was delivered to you and Mr. McDonnell at LaGuardia Airport; is that correct?

A Yes.

Q Was it signed at the time it was delivered to you?

A Did we sign it?

Q Was it signed?

A As far as I know, it was signed but it was not recorded.

Q Do you own an interest in a certain shopping center?

A No.

Q Do you own any land in the southern part of the United States?

A No.

Q Have you purchased any land anywhere else?

A Yes.

Q Now, did you purchase the land alone?

A No, we had a joint venture. A joint venture in the state of Texas.

Q And, that involved the acquisition of land, did it?

A Yes. It was for tax purposes. It was a tax shelter.

Q And, now, were you present at the closing of that transaction?

A I don't recall. I don't think so. As far as I know, I don't think so.

Q Were you present at the closing when you purchased your home?

A One of them, yes.

Q Do you have any recollection of having been given a signed deed before you paid for the property?

MR. GOLUB: Your Honor, I am going to object. That's totally irrelevant.



MR. ROSEN: It might be irrelevant your Honor, but the witness has testified before he even paid the seller, before the seller even received the consideration for the property he signed a deed. This is incredible testimony.

MR. GOLUB: Objection.

THE COURT: Before he got the deed you say that he paid the money?

MR. ROSEN: No, that the deed was signed before the seller even got the money. The seller wasn't present there.

THE COURT: I understand what the Plaintiff is trying to do is show that the deed was already executed and shown to him so they could get the money. Not delivered, but executed and that Mr. Freedman was holding it in escrow and Mr. Grande was holding it in escrow.

MR. ROSEN: What happened was that the deed it was showed to them, the deed was signed and after that they said now give us the money. It was just shown to us --

THE COURT: That's the claim.

BY MR. ROSEN:

Q How long did the meeting take place, the meeting

that you say took place?

A I would say two, two and a half hours. We had lunch and we did go over it.

Q The various documents that were delivered by Mr. Freedman, did he review all of those at the closing?

THE COURT: At LaGuardia?

A I assume we went over each and every one.

Q And, who did you give the check to?

A Physically? I may not have -- my secretary may have given it to Mr. Grande or Mr. Freedman. She was sitting at the table when we finished up. She was near -- she's a notary public. I don't remember.

Q Did you give Mr. Freedman instructions about how, about what disposition he should make of the check, did you tell him what to do?

A He was an attorney and I assumed he knew what to do. What had to be done.

THE COURT: How much longer will you be?

MR. ROSEN: I can't be much beyond 5 o'clock. As a matter of fact, I have no further questions on cross-examination of this witness.

I would like in the interests of expediting matters to recall Mr. Grande for two minutes, your Honor.



THE COURT: Mr. Golub, is there anything further of this witness?

MR. GOLUB: I have one question on redirect.

REDIRECT EXAMINATION

BY MR. GOLUB:

Q Mr. De Martino, was it your understanding when you sat down to the closing at LaGuardia Airport and you gave the check for \$80,000.00 and you were shown the deed on which you signed your name, and the mortgage on which you signed your name, and the note, was it your understanding that you were closing the transaction and you owned the property at LaGuardia Airport?

A Yes, that was a great assumption.

MR. VISCARDI: Do you know what a closing is?

THE WITNESS: When you buy property and you close the deal.

MR. VISCARDI: A closing is a closing as far as you know?

THE WITNESS: Yes.

THE CLERK: Mr. Grande, you are reminded that you are still under oath.

REDIRECT EXAMINATION

BY MR. ROSEN:

Q Mr. Grande, in July of 1973, did you do business

under a trade name?

A Yes.

Q What was the trade name?

A New England Realty Company.

Q I show you a bill here from Berkshire Hills Aviation and I ask you, was that bill submitted to you from Berkshire Hills Aviation?

A Yes.

Q Does that bill refer to a charter flight that you previously testified about on July 13th, 1973?

A Yes.

Q And, does that bill show how long the charter plane was in New York City on that day?

A Yes, it does.

THE COURT: New York City at LaGuardia Airport?

THE WITNESS: Yes. It does.

BY MR. ROSEN:

Q According to the bill that you received from the charter airline, how long was the plane at LaGuardia Airport on July 13th, 1973?

A One point three hours.

Q Where does the charter plane park at LaGuardia Airport and how far away were you from the restaurant where



you had the meeting?

A The plane parks some distance from the main terminal. You have to walk there.

Q Could you estimate how long it takes to walk from there to the restaurant?

A Oh, maybe 12 minutes.

Q And, after the meeting, you walked back to the plane; is that correct?

A Yes.

Q And, you arrived there?

A I am sorry. We had parked at the terminal and we had to take a cab over to where they were.

Q When you arrived at your meeting at the restaurant, were Messrs. McDonnell and De Martino present?

A Yes.

MR. GOLUB: Any representations that were made, you can make them in three minutes. I don't see the relevancy.

MR. ROSEN: It goes to the question of creditability, your Honor.

THE COURT: I don't think it adds anything.

BY MR. ROSEN:

Q Did you go back on the same charter, did you fly back on the same airline?

A On the same plane.

Q You heard Mr. De Martino testify here just a few minutes ago about a conversation he had with you, with regard to 180 acres instead of 300 acres; is that correct?

A Yes.

Q Did you ever make that representation to Mr. De Martino at the closing?

A I don't believe I did.

Q Are you sure about that?

A I am not positive.

THE COURT: You don't know whether it was true, the tax office's estimate of the acreage?

THE WITNESS: They knew what it was before, before we even got involved. I was told there was 300 acres. They knew that. They don't have a survey. They just guess it.

THE COURT: Well, they don't have a survey?

THE WITNESS: They looked it up by the old deed and sometimes they can be off or they can be on the nose.

BY MR. ROSEN:

Q Do you know if the land was surveyed at the time?

A Yes, as I told you before, I know it was surveyed.

When it first got surveyed I was told it was 300 acres.



MR. GOLUB: I object, your Honor.

MR. VISCARDI: I join in your objection.  
It's not within the jurisdiction.

THE COURT: This has nothing to do with jurisdiction. You are just trying to get your case in.

MR. GOLUB: I'll withdraw the objection.  
If I may say a brief word. The representation was that there was 300 acres and when they asked whether it was they were told not to worry about it because --

THE COURT: I heard the testimony on it.

MR. GOLUB: I am just confirming what was said.

THE COURT: The witness testified that he was told by Mr. Grande that it was about 300 acres. I have dealt with a lot of land so when you are talking about the merits -- I don't know. It may be in evidence for jurisdictional purposes. On the merits, it is not the same thing.

Say, here I am to buy this land. It's about 300 acres, or I buy this land, well, it's \$400.00 an acre. Let's figure it out. It's two different way of buying land. The mere fact that it is 300

A-95

acres, that is mentioned doesn't mean that it is the representation. I'm talking about the merits.

MR. GOLUB: I understand that. I am asking the witness whether or not the representation was ever made.

A I admit it, I told the whole world there was 300 acres.

THE COURT: All right, you may step down.

MR. GOLUB: May I ask the Court in view of the testimony of this witness, would the Court wish to hold a hearing for the testimony of Mr. Freedman who could not be here today. I suspect that the defendant would like that. That's for the Court to decide.

THE COURT: What could he add to this, counselor?

MR. VISCARDI: Confusion.

MR. GOLUB: I have never met Mr. Freedman.

THE COURT: As I see, there are two theories here. One is that Mr. Grande does business in New York and that might keep Mr. Grande in. The other is the representation was made at LaGuardia. It doesn't seem to be much of a dispute as to the facts.

MR. VISCARDI: I think that the jurisdiction



lies in fraud.

THE COURT: I understand it's a fraud.  
That's your contention?

MR. GOLUB: That's exactly right.

THE COURT: I was going to say the problem is that the misrepresentation that you claim was made in the state of New York, had nothing to do with the contract. The contract was already made and they came down to close the title. How would the closing at LaGuardia have anything to do with the fraud to induce the contract with regard to the Tortus Act.

MR. GOLUB: It is our contention that the issue raised by Mr. De Martino when he saw the fact that the acreage listed on the closing statement, and the income tax adjustment, only adjusted to approximately 190 some odd acres. Mr. De Martino raised the question and he was assured by Mr. Grande that it was 300 acres.

THE COURT: Now, you claim that the Tortus Act was the representation made at the time?

MR. GOLUB: On the basis on that claim.

THE COURT: Apparently, you're seeking a decision or you have an action for fraud. The fraud



being committed at the time the contract was entered into; is that correct?

MR. GOLUB: Well, it's different, your Honor. I believe that it was committed in two places. Originally there was a fraudulent statement made when they presumably had not turned over the balance of the money and not closed.

THE COURT: The claim, the representation made at LaGuardia, induced the turning over of the money, the balance of the purchase price?

MR. GOLUB: Sure.

MR. VISCARDI: It doesn't say that in the complaint.

THE COURT: We are talking about jurisdiction.

MR. GOLUB: And, in fact I would be prepared to substantiate the representation with two other witnesses I was going to call but which I am not because it's going to the merits.

THE COURT: What I am saying, Mr. Golub is that there is no real dispute about the facts.

MR. DOUGHERTY: Your Honor, William Dougherty, 50 Broadway, New York, New York. There are several issues I think. Mr. Freedman appears -- the main thing is to determine whether the deed was signed



at LaGuardia Airport? Whether Mr. Freedman was their agent? As I see the question, your Honor, there is serious agency problems.

If Mr. Freedman was acting on behalf of the Plaintiffs, all of these documents that were given to Mr. Freedman and taken up to Massachusetts and not transferred to the seller until he received an executed deed, then there is no transaction in New York.

MR. GOLUB: Mr. Grande testified that he was Mr. Patten's agent on the record.

THE COURT: Let's assume that the deed was not signed but was used for the purpose of inducing him to part with his money. Then they don't have a claim. The closing was here. The jurisdiction is not based on the contract.

MR. ROSEN: Your Honor, I beg to differ. The transaction took place in the state of New York.

MR. GOLUB: This is a jurisdictional action and Mr. Freedman must be brought here to Court on the agency. He was the agent of the Plaintiffs and he instructed the Plaintiffs that he would not deliver the mortgage until there was an executed deed. Other than that, your Honor, Mr. Patten is an experienced real estate dealer who would know to maintain a signed



deed and give it to the agents of the Plaintiffs to take to New York.

Now, Mr. Freedman was an agent of three or five of them. Mr. Grande testified that he was Mr. Patten's agent in the transaction. He testified to this on direct testimony.

THE COURT: All right, bring in Mr. Freedman.

MR. VISCARDI: Do you want me to bring him in?

THE COURT: Well, he's your client. We'll keep it open. All right gentlemen, thank you.

(Whereupon, at five past five this hearing concluded.)

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## DEFENDANTS' EXHIBIT A - AGREEMENT OF PURCHASE

*Agreement*

The undersigned SELLER agrees to SELL and the undersigned BUYER agrees to BUY the real estate situated at No. Harvard St. Dana State of MASS

Harvard Room AS Patton Lane  
which includes chert

Total Price \$ 1600000.00

Deposit received by SELLER \$ 100000.00

Balance due SELLER at passing of title \$ 144000.00

Cash to be paid by BUYER at passing of title  
(over and above mortgage loan if any) \$

(a) If the BUYER is unable to obtain a new first mortgage for \$ 2  
at 2 % for 2 years, all deposits are to be returned and all parties discharged.  
(or b) The balance of the purchase price to be paid by assuming the present first mortgage of  
\$ 2 to be adjusted to the balance at the time of passing.

The deed to be delivered on or about July 19 1973

The SELLER to give the BUYER possession of same date as above on 19

The SELLER to pay a regular commission of 5 % as per 100

rates to As Agreed To Be Paid By Seller, Broker.

SELLER to give a good and marketable title by deed, subject to easements and restrictions of record, and may use part of the purchase money to pay existing encumbrances. Should the property be damaged by fire or other casualty before the passing of title, the buyer has the option to withdraw and receive his deposit. If BUYER defaults he waives claim to the deposit above which becomes the property of the SELLER and BROKER, equally, as liquidated damages. Interest, Rents, Fuel, Taxes and Insurance to be adjusted as of the date of passing title. All regular fixtures to pass with the sale.

Included: TV antenna        Rugs:        Refrig.        Air Conditioners       

Other Items:       

Signed and sealed Date July 6 1973 Broker John E. Ryan & Co.

Buyer Robert E. Ryan Buyer's Wife         
or Husband       

Seller John E. Ryan Seller's Wife         
or Husband       

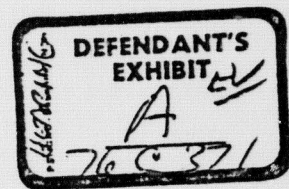
Order these forms direct from:  
REALFORMS Box 1, Brookline, Mass. 02146

FORM RA

BROKER'S COPY



A-101





## PLAINTIFFS' EXHIBIT 1 - WARRANTY DEED

PG 558

I, HARRY S. PATTEN, of Stamford, Bennington County, Vermont, as Trustee under Declaration of Trust, dated December 4, 1972, recorded with Northern Berkshire Registry of Deeds at Adams, Massachusetts, in Book 650, Page 763, in consideration of THIRTY-FIVE THOUSAND (35,000) DOLLARS paid, grant to ROBERT DeMARTINO, whose residence and post office address is Glenby Lane, Brookville, New York 11545, and ROBERT E. McDONNELL, whose residence and post office address is 444 Winchester Street, Hackensack, New Jersey, as tenants in common, with WARRANTY COVENANTS, the land with any and all buildings thereon, situate easterly of the easterly side of Route 43 in Hancock, Berkshire County, Massachusetts, bounded and described as follows:

PARCEL NO. 1: Beginning at a concrete monument designated (A-1), firmly fixed in the ground on the easterly line of a roadway or passageway, said monument marking the southwesterly corner of the premises herein conveyed; thence running northerly along the easterly line of said roadway, a distance of Two Hundred (200') feet to a concrete monument designated (A-2), marking the northwesterly corner of the premises herein conveyed; thence turning at right angles and running easterly in a straight line, a distance of Four Hundred Thirty-five and sixty hundredths (435.60') feet to a point marking the northeasterly corner of the premises herein conveyed; thence turning and running southerly, a distance of Two Hundred (200') feet on a line parallel with the easterly line of said roadway to a point marking the southeasterly corner of the granted premises; thence turning and running westerly a distance of Four Hundred Thirty-five and sixty hundredths (435.60') feet in a line parallel with the northerly boundary line of the premises herein conveyed to the point and place of beginning.

PARCEL NO. 2: Being, all and singular, the same premises conveyed to Robert J. Desormeaux et ux by deed of Jules Desormeaux et ux, dated June 16, 1967, recorded with Northern Berkshire Registry of Deeds at Adams, Massachusetts, in Book 609, Page 399, EXCEPTING therefrom, Parcel No. 1 hereinabove described, the premises conveyed by Robert J. Desormeaux et ux to Eugene C. Reese et ux by deed dated June 19, 1967, recorded with said Registry of Deeds in Book 610, Page 65, and the premises conveyed by Robert J. Desormeaux et ux to Eugene C. Reese et ux by deed dated June 3, 1969, recorded with said Registry of Deeds in Book 632, Page 480.



Parcel No. 1 and Parcel No. 2 are SUBJECT TO the following easements, insofar as same may affect the granted premises: EASEMENT granted by Robert J. Desormeaux et ux to New England Telephone and Telegraph Company, dated August 17, 1967, recorded with said Registry of Deeds in Book 611, Page 249, and EASEMENT granted by Robert J. Desormeaux et ux to Eugene C. Reese et ux, dated June 3, 1969, recorded with said Registry of Deeds in Book 632, Page 481.

PARCEL NO. 3: ALSO GRANTING the right of way, in common with others, extending easterly from the easterly side of Route 43 in Hancock, Massachusetts, as conveyed to Robert J. Desormeaux et als by deed of Jules Desormeaux et als, dated January 7, 1971, recorded with said Registry of Deeds in Book 637, Page 279.

Meaning and intending to convey and hereby expressly conveying, all and singular, the same premises conveyed to me this day by deed of Northern Berkshire Land Company, Inc., to be recorded with said Registry of Deeds, to which deed and the record thereof reference is always to be had.

Real estate taxes for the current year, 1973, have been apportioned between the parties hereto and the grantees assume and agree to pay the same.

WITNESS my hand and seal this      thirteenth      day of  
July      , A. D. 1973.

In the presence of:

Robert J. Desormeaux

Harry S. Patten, Trustee

COMMONWEALTH OF MASSACHUSETTS

Berkshire, ss.

July 13, 1973

Then personally appeared the above named HARRY S. PATTEN, Trustee as aforesaid, and acknowledged the foregoing instrument to be his free act and deed, before me,

Robert J. Desormeaux  
Notary Public

My commission expires June 4, 1974

MANUEL & MA  
ATTORNEYS AT  
85 MAIN STREET  
NORTH ADAM  
MASSACHUSETTS

BERKSHIRE  
NORTH



-2-

Received & entered for record

July 16 1973 at 2 H 09 M P M



RECEIVED  
REGISTRY OF DEEDS  
ADAMS, MASS.

JUL 16 2 09 PM 1973

10<sup>75</sup>

CLERK #4

Deed - Hancock

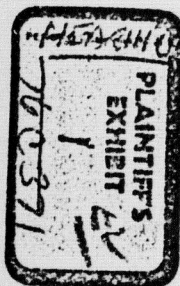
COUNTY OF BENKSHIRE  
ADAMS, MASSACHUSETTS  
RECEIVED AND ENTERED WITH NORTHERN  
DISTRICT REGISTRY OF DEEDS, IN  
BOOK 6554, PAGE 5758

JUL 16 1973

AT 2 O'CLOCK AND 29 MINUTES P.M.

ATTEST:

Edward W. Bunkley  
REGISTER OF DEEDS



A104

R. R. Norton Freedman

WARRANTY DEED

HARRY S. PATTEN, TRUSTEE

to

ROBERT DeMARTINO ET AL

Dated: July 13, 1973  
Location: Off Route 43  
Hancock  
Massachusetts

MANUEL & MANUEL  
ATTORNEYS AND COUNSELLORS AT LAW  
85 MAIN STREET  
NORTH ADAMS, MASSACHUSETTS

I, HARRY S. PATTEN, of Stamford, Bennington County, Vermont, as Trustee under Declaration of Trust, dated December 4, 1972, recorded with Northern Berkshire Registry of Deeds at Adams, Massachusetts, in Book 650, Page 763, in consideration of ONE HUNDRED TWENTY-FIVE THOUSAND (125,000) DOLLARS paid, grant to ROBERT DeMARTINO, whose residence and post office address is Glenby Lane, Brookville, New York 11545, and ROBERT E. McDONNELL whose residence and post office address is 444 Winchester Street, Hackensack, New Jersey, as tenants in common, with WARRANTY COVENANTS, the land with any and all buildings thereon, situate on the easterly side of Route 43 in Hancock, Berkshire County, Massachusetts, bounded and described as follows:

Bounded on the west by the highway leading from Hancock to Williamstown; On the north by land now or formerly of Wilson Williams; On the east by lands now or formerly of Bentley and Maynard; and On the south by land of said Maynard and land of one Cowee, formerly of John Taylor.

Meaning and intending to convey and hereby expressly conveying, all and singular, the same premises conveyed to me by deed of Jules Desormeaux et ux, dated May 17, 1973, recorded with Northern Berkshire Registry of Deeds in Book 653, Page 221, TOGETHER WITH and SUBJECT TO the rights, exceptions, easements and reservations mentioned in said deed.

This conveyance is made SUBJECT TO mortgage granted by Harry S. Patten, as Trustee under Declaration of Trust, dated December 4, 1972, recorded with Northern Berkshire Registry of Deeds at Adams, Massachusetts, in Book 650, Page 763, to Jules Desormeaux et ux, dated May 17, 1973, recorded with said Registry of Deeds in Book 653, Page 224, in the original principal amount of \$62,600.00, which mortgage the grantees assume and agree to pay.

The consideration for this conveyance is \$125,000.00, of which \$63,284.00 is the balance due on the aforesaid mortgage, leaving a balance of \$61,716.00 paid in cash.

Real estate taxes for the current year, 1973, have been apportioned between the parties hereto and the grantees assume and agree to pay the same.



WITNESS my hand and seal this      thirteenth      day of  
July      , A. D. 1973.

In the presence of:

Robert Manuel

Harry S. Patten, Trustee

COMMONWEALTH OF MASSACHUSETTS

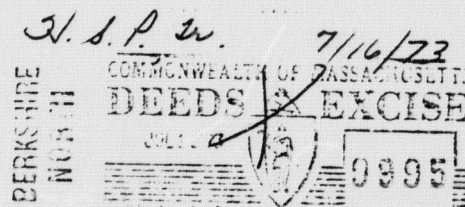
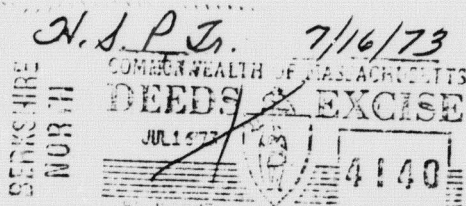
Berkshire, ss.

July 13, 1973

Then personally appeared the above named HARRY S. PATTEN,  
Trustee as aforesaid, and acknowledged the foregoing instru-  
ment to be his free act and deed, before me,

Robert Manuel  
Notary Public

My commission expires June 4, 1976



Received & entered for record

July 16 1973 at 2 H 10 M PM

2253  
RECEIVED  
REGISTRY OF DEEDS  
ADAMS, MASS.

JUL 16 2 10 PM 1973

FEB 10 73

CLERK #4

Deed - Hancock

COUNTY OF BERKSHIRE  
ADAMS, MASSACHUSETTS  
RECEIVED AND ENTERED WITH NORTHERN  
DISTRICT REGISTRY OF DEEDS, IN  
BOOK 654, PAGE 560

JUL 16 1973

AT 2 O'CLOCK AND 10 MINUTES P.M.

ATTEST:

Edward W. Buckley  
REGISTER OF DEEDS

WARRANTY DEED

HARRY S. PATTEN, TRUSTEE

to

ROBERT DeMARTINO ET AL

Dated: July 13, 1973  
Location: Route 43  
Hancock  
Massachusetts

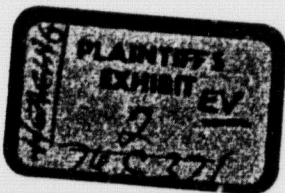
MANUEL & MANUEL  
ATTORNEYS AND COUNSELLORS AT LAW  
85 MAIN STREET  
NORTH ADAMS, MASSACHUSETTS

A-107

R.R. Martin Freeman



## PLAINTIFFS' EXHIBIT 2 - PROMISSORY NOTE



July 13, 1973

To HARRY S. PATTEN, TRUSTEE under  
Declaration of Trust, dated  
December 4, 1972, recorded with  
Northern Berkshire Registry of  
Deeds at Adams, Massachusetts, in  
Book 650, Page 763:

We are this day purchasing from you certain land  
situate in Hancock, Berkshire County, Massachusetts, for the  
sum of ONE HUNDRED TWENTY-FIVE THOUSAND (125,000) DOLLARS,  
which land is subject to a mortgage granted by you as  
Trustee as aforesaid, to Jules Desormeaux and Lucy R.  
Desormeaux, securing note in the amount of SIXTY-TWO  
THOUSAND SIX HUNDRED (62,600) DOLLARS with interest thereon  
at the ANNUAL PERCENTAGE RATE of seven (7) per cent, which  
note is payable in annual installments of TWELVE THOUSAND  
FIVE HUNDRED TWENTY (12,520) DOLLARS, together with interest,  
a copy of said note being attached hereto and made a part  
hereof.

As part of the consideration for such conveyance,  
we hereby agree to pay said note not later than thirty (30)  
days from May 17 in each calendar year, as payments are re-  
quired under said note, and to faithfully perform all of the  
terms and conditions recited in said note and in the mortgage  
securing said note.

In the presence of:

---

Robert DeMartino

---

Robert E. McDonnell

North Adams, Massachusetts, May 17, 1973

\$62,600.00

FOR VALUE RECEIVED, I, HARRY S. PATTEN, Trustee under Declaration of Trust dated December 4, 1972, recorded with Northern Berkshire Registry of Deeds at Adams, Massachusetts, in Book 650, Page 763, promise to pay to the order of JULES DESORMEAUX and LUCY E. DESORMEAUX, jointly or to the survivor of them, the sum of SIXTY-TWO THOUSAND SIX HUNDRED (62,600) DOLLARS, with interest at the ANNUAL PERCENTAGE RATE OF SEVEN (7) PER CENT.

Principal shall be paid in five (5) annual installments of TWELVE THOUSAND FIVE HUNDRED TWENTY (12,520) DOLLARS, together with interest on the unpaid balance of this note, on the seventeenth day of May of each and every calendar year commencing May 17, 1974.

Upon default in the payment of any such installment, or in any of the covenants recited in the mortgage which secures this note, for a period of sixty (60) days, the entire balance of this note then remaining unpaid, together with any accrued interest thereon shall, at the option of the holder hereof, forthwith become due and payable without demand or notice. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

The right to anticipate payment of any portion or all of the unpaid principal of this note at any time before maturity is hereby reserved.

S

Signed in the presence of:

/s/

Harry S. Patten, Trustee as aforesaid

This note is secured by mortgage of real estate situate off Route 43, Hancock, Massachusetts, to be recorded with Northern Berkshire Registry of Deeds.

A109



## PLAINTIFFS' EXHIBIT 3 - MORTGAGE AGREEMENT

We, ROBERT DeMARTINO of Brookville, New York, and ROBERT E. McDONNELL of Hackensack, New Jersey, for consideration paid, grant to HARRY S. PATTEN, of Stamford, Bennington County, Vermont, as Trustee under Declaration of Trust, dated December 4, 1972, recorded with Northern Berkshire Registry of Deeds at Adams, Massachusetts, in Book 650, Page 763, with MORTGAGE COVENANTS, the land with any and all buildings thereon, situate on the easterly side of Route 43 in Hancock, Berkshire County, Massachusetts, bounded and described as follows:

Bounded on the west by the highway leading from Hancock to Williamstown; On the north by land now or formerly of Wilson Williams; On the east by lands now or formerly of Bentley and Maynard; and On the south by land of said Maynard and land of one Cowee, formerly of John Taylor.

Meaning and intending to convey and hereby expressly conveying, in mortgage, all and singular, the same premises conveyed to us this day by deed of Harry S. Patten, as Trustee under Declaration of Trust, dated December 4, 1972, recorded with Northern Berkshire Registry of Deeds at Adams, Massachusetts, in Book 650, Page 763; TOGETHER WITH and SUBJECT TO the rights, exceptions, easements and reservations mentioned in said deed.

SUBJECT TO mortgage granted by Harry S. Patten, as Trustee under Declaration of Trust, dated December 4, 1972, recorded with Northern Berkshire Registry of Deeds at Adams, Massachusetts, in Book 650, Page 763, to Jules Desormeaux et ux, dated May 17, 1973, recorded with said Registry of Deeds in Book 653, Page 224, in the original principal amount of \$62,600.00.

Together with all the rights, easements and appurtenances thereto belonging: including as part of the realty all portable or sectional buildings at any time placed upon said premises and all furnaces, heaters, plumbing, gas and electric fixtures, screens, martels, shades, screen doors, storm doors and windows, oil burners, and all other fixtures of whatever kind and nature at present or hereafter installed in or on the granted premises in any manner which renders such articles usable in connection therewith so far as the same are or can, by agreement of the parties, be made a part of the realty.



The purpose of this mortgage is to secure the payment by the mortgagors of \$62,600.00 with interest at the ANNUAL PERCENTAGE RATE of 7 per cent according to the terms of a certain note drawn by Harry S. Patten, Trustee under Declaration of Trust dated December 4, 1972, recorded with Northern Berkshire Registry of Deeds at Adams, Massachusetts, in Book 650, Page 763, to Jules Desormeaux and Lucy E. Desormeaux, dated May 17, 1973, (provided, however, that any default in payment by the mortgagors of the note of Harry S. Patten, Trustee as aforesaid, to Jules Desormeaux and Lucy E. Desormeaux as aforesaid, 30 days after May 17, 1974, or 30 days after the seventeenth day of May in each calendar year that said note remains unpaid, shall constitute a breach of this mortgage) and to secure the performance by the mortgagors of all of the terms and conditions of the mortgage securing said note, which mortgage is dated May 17, 1973, and is recorded with said Registry of Deeds in Book 653, Page 224.

Without limiting the statutory mortgage condition and the statutory mortgage covenants which are herein incorporated by reference and the performance of which conditions and covenants is hereby secured, this mortgage shall also secure the performance of the following described additional conditions and covenants, namely: The mortgagors further covenant to pay all municipal taxes, charges and assessments upon the mortgaged premises. In addition to the fire insurance provided for in the statutory condition hereinafter referred to the mortgagors herein agree that said fire insurance shall also include what is commonly known as "Extended Insurance Coverage" on the buildings on said land. The policy or policies evidencing



such insurance shall be made first payable in the event of loss or damage to the mortgagee, and in the event of loss or damage, the insurance proceeds may at the sole option of the mortgagee be applied either to reduce the indebtedness secured hereby or to repair or restore the damaged buildings and improvements: each insurer is hereby authorized and directed to make payment for such loss or damage directly to the mortgagee instead of to the mortgagors and mortgagee jointly, and the mortgagee is hereby appointed attorney irrevocably of the mortgagors to sign any and all documents, checks, drafts and other instruments that may be required in connection with the adjustment and collection of such loss or damage. The mortgagors further agree and covenant, that upon default in any of said additional conditions for more than thirty (30) days, the whole sum of principal and interest then remaining unpaid shall immediately become due and payable without notice at the option of the mortgagee. The mortgagors further agree and covenant that if foreclosure proceedings under any second mortgage or second trust deed or any junior lien of any kind on the within described premises or any part thereof should be instituted, or in the event of any levy or sale upon execution or other proceeding of any nature whereby the owners of said premises shall be deprived of their title or right of possession to said premises or any part thereof, or if the owners shall divest themselves of title, then in any of said events, the mortgagee may at his option immediately declare the entire debt secured by this mortgage and the note secured thereby, due and payable, and institute such proceedings as may be necessary to protect his interests in the premises. The

mortgagee shall have such option of acceleration upon each and every subsequent transfer of such ownership or any part thereof.

This mortgage is upon the STATUTORY CONDITION, incorporated herein by reference, for any breach of which the mortgagee shall have the STATUTORY POWER OF SALE, and in the event of such sale the mortgagee may sell any portion or the whole of said premises on the premises or in any law office in said County of Berkshire.

WITNESS our hands and seals this

day of

, A. D. 1973.

In the presence of:

\_\_\_\_\_  
Robert DeMartino

\_\_\_\_\_  
Robert E. McDonnell

County of \_\_\_\_\_, ss.

, 1973

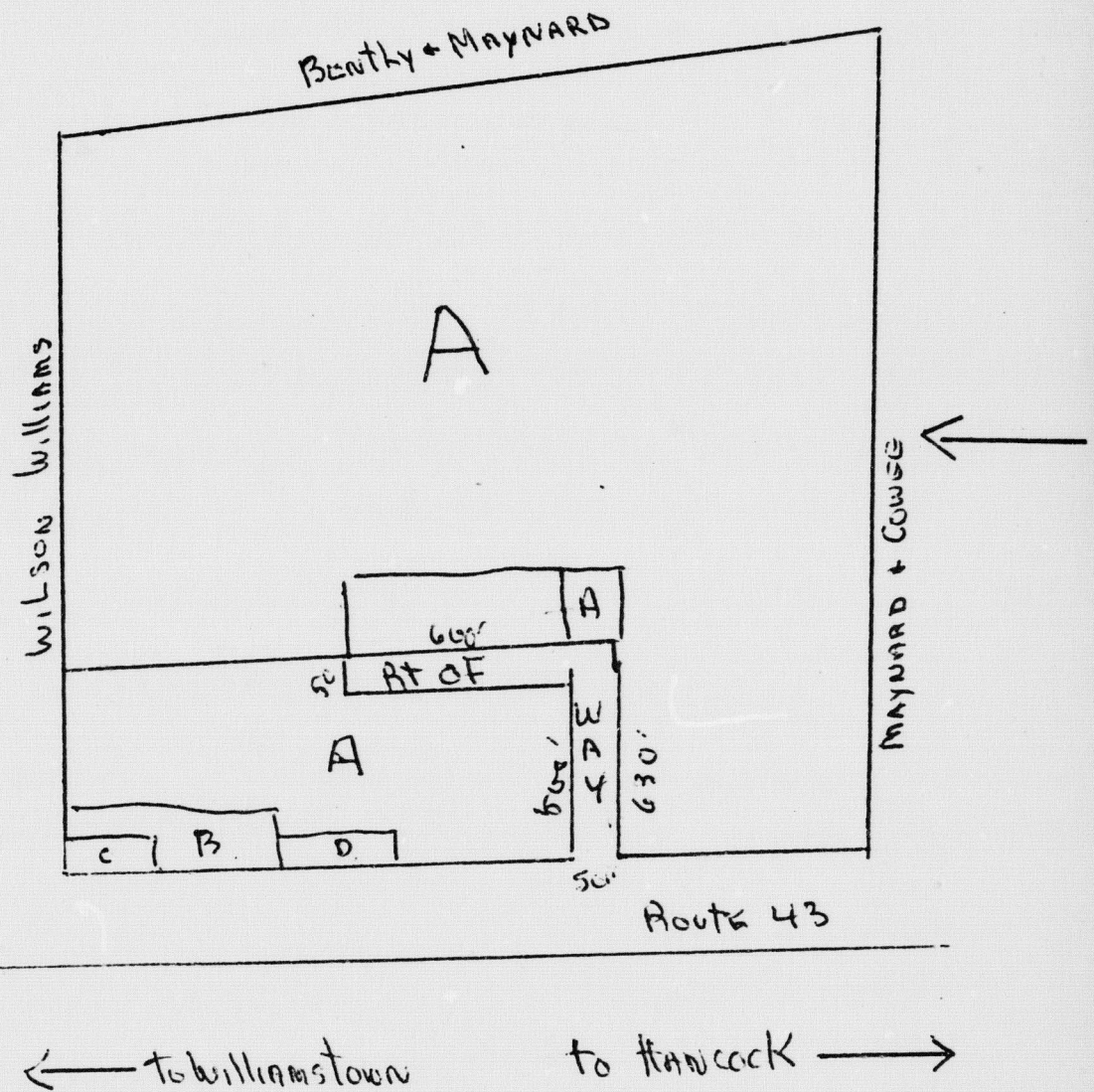
Then personally appeared the above named ROBERT DeMARTINO and ROBERT E. McDONNELL and acknowledged the foregoing instrument to be their free act and deed, before me,

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_



## PLAINTIFFS' EXHIBIT 4 - DRAWING

Not to Scale

PLAINTIFFS' EXHIBIT 5 - LETTER FROM ATTORNEY  
FREEDMAN TO PLAINTIFFS DATED JULY 13, 1973

*Morton Freedman*  
ATTORNEY AT LAW  
EMPIRE BUILDING  
57 MAIN STREET  
NORTH ADAMS, MASSACHUSETTS 01247  
663-6565

July 13, 1973

Messrs. Robert DeMartino and Robert E. McDonnell

Re: Hancock Land

Gentlemen:

This is to advise that on Friday, July 13, 1973 you are purchasing from Harry S. Patten, as Trustee under a Declaration of Trust dated December 4, 1972 and recorded with the Northern Berkshire Registry of Deeds at Adams, Massachusetts in Book 650, Page 763, land with any and all buildings thereon situate on the easterly side of Route 43 in Hancock, Berkshire County, Massachusetts. The total purchase price of said land is in the sum of \$160,000.00. Said land will be conveyed by two deeds. One deed will disclose a \$35,000.00 purchase price and represents the land with the chalet and being about 200 feet by 435.60 feet. The second deed represents the remaining portion of all the land purchased and discloses a purchase price of \$125,000.00. On this piece there exists a mortgage granted by Harry S. Patten, Trustee to Jules Desormeaux et ux dated May 17, 1973 and recorded with the Northern Berkshire Registry of Deeds in Book 653, Page 224 in the original principal sum of \$62,600.00. This mortgage secures a promissory note dated May 17, 1973 from Harry S. Patten, Trustee to Jules Desormeaux et ux in the amount of \$62,600.00 with annual interest at the rate of 7%. Principal of said note shall be paid in five annual installments of \$12,520.00 together with interest on the unpaid balance of said note on the 17th day of May of each and every calendar year commencing May 17, 1974. It is this note and mortgage which you are agreeing and assuming to pay. The seller, Harry S. Patten, Trustee is also requiring that you execute a mortgage to him to secure the payment of the aforementioned note and mortgage in the principal sum of \$62,600.00.

It is my understanding that you have made a deposit in the amount of \$16,000.00 to date.

I am enclosing herewith for your records the following:-

- (a) Cash transaction
- (b) Tax adjustment schedule for \$35,000.00 parcel
- (c) Tax adjustment schedule for \$125,000.00 parcel
- (d) Copy of promissory note you are assuming and agreeing to pay



July 13, 1973  
Page 2

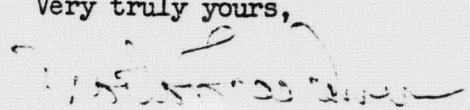
- (e) Rough sketch of land purchased designating right of way and other parcels conveyed out.

On said sketch enclosed herewith you will note a right of way is designated. Said right of way is approximately 50 feet in width commencing from the easterly side of Route 43 in Hancock and running westerly on the northerly line a distance of about 500 feet and on the southerly line a distance of about 630 feet thence running in a northerly direction with the westerly line a distance of about 550 feet and the easterly line a distance of about 600 feet. The area marked A is the areas conveyed to you in addition to that area marked E on which I believe the chalet is located. The remaining areas so designated on the sketch have been conveyed out to various other individuals. Any other areas intended to be divided into lots would be subject to receiving the necessary planning board approval excepting for that portion fronting on the public way, Route 43. I am also enclosing herewith my title certificate.

If there be any further information that I can furnish you with I shall be more than happy to cooperate.

Thanking you for the opportunity to have been of service, I am

Very truly yours,

  
Morton Freedman

MF/cf  
Encls.

## PLAINTIFFS' EXHIBIT 6 - TAX ADJUSTMENT SCHEDULE

Harry S. Patten, Trustee

July 13, 1973

to Robert DeMartino and  
Robert E. McDonnell

Tax Adjustment Schedule

Location: Route 43  
Hancock, Massachusetts

Property formerly owned by Ry Jiminy, Inc.:

Prior taxes paid - 1973 tax rate not determined

## Assessed values:

|                        |            |
|------------------------|------------|
| 180 acres of land----- | \$9,000.00 |
| 1972 tax rate-----     | 30.00/M    |
| 1972 tax (paid)-----   | \$ 270.00  |

Adjustment due buyer, based on 1972 tax:

January 1 - July 13:

194 days at \$.74-----\$143.56

Property formerly owned by Jules and Lucy Desormeaux:

Prior taxes paid - 1973 tax rate not determined

## Assessed values:

Portion retained by Desormeaux:

|                           |             |
|---------------------------|-------------|
| Swamp, farm: 3 acres----- | \$ 900.00   |
| House and garage-----     | 10,000.00   |
| Total-----                | \$10,900.00 |

Portion conveyed:

|                                          |          |
|------------------------------------------|----------|
| 15.1 acres-----                          | \$755.00 |
| 1972 tax rate-----                       | 30.00/M  |
| 1972 tax (paid) on portion conveyed----- | \$ 22.65 |

Adjustment, based on 1972 tax:

Buyers' share (Desormeaux to pay bill):

July 14 - December 31:

171 days at \$.06-----10.26

Balance of adjustments due buyers-----\$133.30



Northern Berkshire Land Company, Inc.

to Harry S. Patten, Trustee.

and

Harry S. Patten, Trustee

to Robert DeMartino et al

---

July 13, 1973

Location:

Route 43

Hancock, Massachusetts

Tax Adjustment Schedule

Prior taxes paid

1973 tax not determined

1972 tax: \$207.00 paid

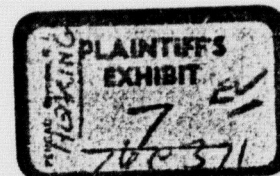
Adjustment due buyer:

January 1 - July 13, 1973:

194 days at \$.57 ----- \$110.58

PLAINTIFFS' EXHIBIT 7 - PRELIMINARY TITLE OPTION

PRELIMINARY TITLE OPINION



To: Robert E. McDonnell  
Robert DeMartino

Re: Title of HARRY S. PATTEN, as Trustee  
Land - Hancock, Massachusetts

I have examined the status of the record title to property described in deed of Jules Desormeaux et ux to Harry S. Patten, as Trustee dated May 17, 1973 and recorded with the Northern Berkshire Registry of Deeds in Book 653, Page 221 and in deed of Northern Berkshire Land Company, Inc. to Harry S. Patten and deed of Robert J. Desormeaux et ux to Northern Berkshire Land Company, Inc., dated January 31, 1972 and recorded with the said Registry of Deeds in Book 645, Page 775.

The indices in said Land Records disclose the fee simple title to the above described property to be, at the date hereof, vested in the said Harry S. Patten, as Trustee and the said Northern Berkshire Land Company, Inc., without incumbrance of record, except:

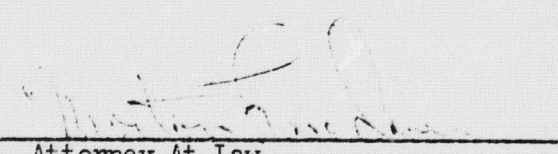
Mortgage granted by Harry S. Patten, as Trustee to Jules Desormeaux et ux, dated May 17, 1973 and recorded with the Northern Berkshire Registry of Deeds in Book 653, Page 224.

Rights of way, easements, exceptions and reservations mentioned in deed from Jules Desormeaux et ux to Harry S. Patten, as Trustee recorded in Book 653, Page 221 in the Northern Berkshire Registry of Deeds and dated May 17, 1973.

This title opinion does not certify as to the quantum of acreage, as to the boundaries, or the location of buildings, or as to such facts as a field survey would disclose, or as to any rights created by adverse users or otherwise not appearing of record.

Subject to Sub-Division Control Laws and Zoning.

This title commences July 29, 1947 and runs to date hereof.

  
\_\_\_\_\_  
Attorney At Law



PLAINTIFFS' EXHIBIT 7 - ATTORNEY FRIEDMAN'S BILL

MORTON FREEDMAN

ATTORNEY AT LAW

TELEPHONE 663-6565

EMPIRE BUILDING  
57 MAIN STREET  
NORTH ADAMS, MASS. 01247

July 13, 1973

Messrs Robert DeMartino and Robert E. McDonnell  
Route 43  
Hancock, Mass.

Re: Land - Hancock, Mass.

---

FOR PROFESSIONAL SERVICES RENDERED:

|                                                                                                                       |            |
|-----------------------------------------------------------------------------------------------------------------------|------------|
| (a) Office conferences, telephone calls, title search, financial allocations, New York closing and final search ..... | \$1,000.00 |
| (b) Recording charges of two deeds and mortgage .....                                                                 | 34.25      |
| Total                                                                                                                 | \$1,034.25 |

*[Handwritten signature]*  
*[Handwritten signature]*  
7/13/73

## PLAINTIFFS' EXHIBIT 7 - CLOSING STATEMENT

Harry S. Patten, Trustee

July 13, 1973

to Robert DeMartino and  
Robert E. McDonnellLocation: Route 43 and Off Route 43  
Hancock, Massachusetts

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|                                    |                  |               |
|------------------------------------|------------------|---------------|
| Selling price-----                 | \$125,000.00     |               |
|                                    | <u>35,000.00</u> | \$160,000.00  |
| Less credits due buyer:            |                  |               |
| Deposit made prior to closing----- | \$16,000.00      |               |
| Mortgage assumed by buyer-----     | 63,284.00        |               |
| Tax adjustment due buyer:          | \$133.30         |               |
|                                    | <u>110.58</u>    |               |
|                                    |                  | <u>243.88</u> |
| Total credits due buyer-----       |                  | 79,527.88     |
| Balance due at closing-----        |                  | \$ 80,472.12  |



MEMORANDUM OF DECISION AND ORDER APPEALED FROM

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
-----

76 C 371

ROBERT E. McDONNELL  
and ROBERT DeMARTINO,

Plaintiffs,

-against-

Memorandum of Decision  
and Order

SOUTHERN VERMONT LAND CO.,  
INC., HARRY S. PATTEN,  
MORTON FREEDMAN, and  
PHILLIP GRANDE,

Defendants.

January 4, 1976  
-----

A P P E A R A N C E S :

BENJAMIN J. GOLUB, ESQ.  
Attorney for Plaintiffs  
Office and P. O. Address  
No. 10 East 40th Street  
New York, New York 10016

ROSEN, GOLDBERG, SLAVET, LEVENSON  
& WEKSTEIN, ESQS.  
Attorneys for Defendants, Southern  
Vermont Land Co., Harry S.  
Patten and Phillip Grande  
Office and P. O. Address  
No. One Boston Place  
Boston, Massachusetts 02108  
Of Counsel: Jerome E. Rosen, Esq.

MORTON FREEDMAN, ESQ.  
Defendant Pro Se  
Office and P. O. Address  
No. 57 Main Street  
North Adams, Massachusetts 01247

MISHLER, CH. J.

Plaintiffs commenced this action seeking to recover money damages allegedly sustained as a result of defendants' fraudulent inducements to purchase certain developed property and raw acreage located in Massachusetts. Plaintiffs additionally charge defendant Freedman, their attorney in the real estate transaction, with negligence and intentionally failing to disclose his previous relationships with the other individual defendants. Defendants Southern Vermont Land Co. Inc. ("Southern Vermont"), Harry S. Patten, and Phillip Grande move to dismiss the action for lack of in personam jurisdiction and insufficiency of process, pursuant to Rules 12(b)(2) and 12(b)(4), F.R.Civ.P. <sup>/1</sup> An evidentiary hearing, ordered by this court, was conducted on December 3, 1976; the court finds as follows:

Defendant Grande, a Massachusetts resident, is a stockholder of Southern Vermont, a real estate brokerage organized under Vermont laws with its principal offices in Williamstown, Massachusetts. In early July, 1973,

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<sup>/1</sup>

Defendant Morton Freedman does not join the motion.



Grande was approached by plaintiffs in his Massachusetts office. Plaintiffs indicated a desire to purchase developable lands in the western portion of the state. Grande showed them two listed parcels located in Hancock, Massachusetts, which were owned by defendant Patten as trustee under a declaration of trust. After both a walking tour and aerial survey, the parties returned to Grande's office where he advised plaintiffs that an application for subdivision of the parcels had been filed and was being contested in the courts. The proposed subdivision plan was produced and inspected by plaintiffs.

Plaintiffs immediately expressed their willingness to purchase the property, and Grande promptly drew up a purchase agreement in longhand. He procured plaintiffs' signatures while they remained in Massachusetts and arranged to obtain the signature of seller Patten.<sup>12</sup>

Although there was no reference in the purchase agreement

<sup>12</sup>

Defendant Patten, a Massachusetts resident, is also a stockholder and is president of Southern Vermont. While on several different occasions he was a partner with Grande in real estate transactions, there is no evidence that here, Grande acted in any capacity other than that of a real estate broker.

as to the total amount of acreage comprising the second parcel of land, the crux of plaintiffs' complaint is that defendants represented it was approximately a 300-acre plot and accordingly, calculated the total purchase price of \$125,000 at \$400 per acre. Grande expressly denies that any representation regarding acreage was made and contends that the sale price was predicated upon the number of building lots in the proposed subdivision. Resolution of this issue goes to the merits of the action and is not considered for the purpose of the motion. What is pertinent to the instant motion, however, is to consider where the price was determined.

After signing the purchase agreement, plaintiffs inquired of Grande if he knew a local attorney who could represent them at the closing. Grande suggested defendant Freedman, who maintained offices in North Adams, Massachusetts. Plaintiffs retained his services and requested he arrange for the necessary title search.

Shortly thereafter, when advised the title search had been completed, Grande called plaintiffs in New York and asked them to come to Massachusetts for the closing. Plaintiffs advised him that they could not get



away. To accommodate them, Grande flew into LaGuardia Airport with Freedman where they met with plaintiffs in order to finalize the transaction. At the airport, plaintiffs reviewed the details of title, signed an agreement assuming the existing mortgage, and delivered to Freedman a check for the balance of the purchase price. Freedman and Grande immediately flew back to Massachusetts where counsel recorded the deed the next day and tendered payment to Patten's attorney.

After taking title, plaintiffs discovered the second parcel, for which they paid approximately \$125,000, contained only 200 acres, far less than the 300 they contemplated. They, in turn, initiated a diversity action in this court seeking to recover money damages. In the seven claims recited in the complaint, plaintiffs charge defendants Southern Vermont, Grande, and Patten with fraudulently representing the total acreage in parcel two, and allege defendant Freedman was negligent in failing to discover the difference. Service was effected on all defendants in Massachusetts. Defendants Southern Vermont, Grande, and Patten all move to dismiss for lack of jurisdiction.



Plaintiffs claim this court is vested with in personam jurisdiction pursuant to the state's long arm statute, NYCPLR §§302(a)(1) and (a)(2).<sup>/3</sup> Plaintiffs argue that the activities performed by defendants Grande and Freedman at LaGuardia Airport were sufficient to constitute the "transaction of business." NYCPLR §302(a)(1). Alternatively, plaintiffs argue that the fraudulent statements made by defendants at the LaGuardia meeting constitute tortious conduct within the state, giving rise to jurisdiction under NYCPLR §302(a)(2).

Whether the type of activity performed within this state is sufficient to constitute the "transaction of business" necessarily depends on the multitude of facts

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<sup>/3</sup> NYCPLR §302 provides in pertinent part:

(a) Acts which are the basis of jurisdiction.

As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any nondomiciliary, or his executor or administrator, who in person or through an agent:

1. transacts any business within the state; or

2. commits a tortious act within the state except as to a cause of action for defamation of character arising from the act; or



present in the individual case; there is no hard, fast, mechanical test that can be employed to quantify the answer. Franklin National Bank v. Krakow, 295 F. Supp. 910, 918 (D.D.C. 1969); Schroeder v. Loomis, 46 Misc.2d 184, 186, 259 N.Y.S.2d 42, 46 (Sup.Ct. 1965); Aurea Jewelry Creations, Inc. v. Lissona, 344 F. Supp. 179, 181 (S.D.N.Y. 1972). Most critical is the presence of "purposeful activity" or a finding that the defendant has voluntarily invoked the protection of New York laws, Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc., 15 NY 2d 443, 447, 261 N.Y.S.2d 8, 18 (1965); Arcata Graphics Corp. v. Murrays Jewelers & Distributors, Inc., 384 F. Supp. 469, 472 (W.D.N.Y. 1974); Leasco Data Processing Equipment Corp. v. Maxwell, 319 F. Supp. 1256, 1261 (S.D.N.Y. 1970), aff'd in part, rev'd in part, remanded in part, 468 F.2d 1326 (2d Cir. 1972). A mere accidental or fortuitous transaction is not sufficient to confer a jurisdictional basis, Kaye Martin v. Brooks, 267 F.2d 394, 397 (7th Cir), cert. denied, 361 U.S. 832, 80 S.Ct. 84 (1959), McLaughlin Practice Commentaries, 7B CPLR §302 at 72-73 (McKinney, 1972).

It cannot be said that defendants, in traveling to New York on a single occasion, purposefully availed



themselves of the benefits and protections of New York laws. Grande's physical presence within the state, whether it be to clarify the terms of sale or to finally perform the previously signed purchase agreement does not per se establish "purposeful activity"; it is but one factor that must be considered. Franklin National Bank v. Krakow, supra at 918; Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc., supra; Aurea Jewelry Creations, Inc. v. Lissona, supra at 181; Standard Wine & Liquor Co. Inc., v. Bombay Spirits Co., 20 N.Y.2d 13, 17, 281 N.Y.S.2d 299, 301 (1967). In such cases, the number and duration of visits to this state are critical, McLaughlin Practice Commentaries, supra at 75,. See also Liquid Carriers Corp. v. American Marine Corp., 375 F.2d 951 (2d Cir. 1967).

Plaintiffs traveled to Massachusetts and negotiated the purchase; they engaged the services of a Massachusetts broker; they agreed to purchase lands situated in Massachusetts; and they executed the contract of sale while they were there. It was contemplated that final performance would be in Massachusetts. It was only to accommodate plaintiffs' busy schedule that Grande and Freedman traveled to New York. See Aurea Jewelry Creations,



Inc. v. Lissona, supra; Chertok v. Ethyl Corp. of Canada, 341 F. Supp. 1251 (S.D.N.Y. 1972). During defendants' visit of only a few hours duration all that transpired was the signing of a mortgage agreement and the transmitting of a check for the balance by plaintiffs to their own attorney. Final payment was never tendered until Freedman returned to Massachusetts and gave the check to Patten's attorney. We do not find this to be sufficient purposeful activity to constitute a predicate for long arm jurisdiction under NYC-PLR §302(a)(1). Chertok v. Ethyl Corp. of Canada, supra; see also AIL, Division of Cutler-Hammer, Inc. v. Symetrics Industries, Inc., 360 F. Supp. 1138 (E.D.N.Y. 1973); A-leet Leasing Corp. v. Kingshead Corp., 72 Misc.2d 487 (Sup.Ct.1973).

Plaintiffs alternatively contend that CPLR §302 (a)(2) is a proper jurisdictional basis arguing that Grande's fraudulent representations during the LaGuardia meeting induced them into paying the full purchase price. While it is true that "[w]here a defendant knowingly sends into a state a false statement, intending that it should be relied upon to the injury of a resident of the state, he has, for jurisdictional purposes, acted within that state," Polish v. Threshold Technology, Inc., 72 Misc.2d 610, 612, 340 N.Y.

S.2d 354, 356 (Sup.Ct. 1972), quoting Murphy v. Erwin-Wasey, 460 F.2d 661, 664 (1st Cir. 1972), this is not such a case. Whatever fraudulent statements that may have been made concerning the total amount of raw acreage were initially uttered when the parties entered into the contract; the basis for computing the total purchase price was established in Massachusetts. Any reliance by plaintiffs on those representations would have occurred, likewise, in Massachusetts. The repetition of those statements in New York cannot be said to have induced plaintiffs to purchase the property. The tort, if any, would have been committed in Massachusetts. Clearly this would not meet the requirement of CPLR §302(a) (2) that the tortious act be committed within the state.<sup>14</sup>

Lehigh Valley Industries Inc. v. Birenbaum, 389 F. Supp. 798, 808 (S.D.N.Y.), aff'd, 527 F.2d 87 (2d Cir. 1975).

Plaintiffs, therefore, have failed to show any jurisdictional predicate over Southern Vermont or defendant

<sup>14</sup>

Nor do we find a jurisdictional predicate in CPLR §302 (a)(3). If tortious acts were committed without the state, it cannot be said that plaintiffs suffered injury in New York. Moreover, there is no allegation that defendants derive substantial revenues from services rendered in this state or in interstate commerce. CPLR §302(a)(3) (i) and (ii).



Grande. Moreover, it is conceded that defendant Patten never entered New York in connection with this transaction. It is presumed that plaintiffs' theory of in personam jurisdiction over Patten was that Grande acted as his agent in New York. Plaintiffs have offered no evidence to show that any alleged fraudulent statements concerning the quantity of land were made with Patten's knowledge or consent, and cannot be considered to be within Grande's scope of authority to act as Patten's broker in the transaction.

Accordingly, for all of the reasons heretofore cited, defendants Southern Vermont, Grande and Patten's motion to dismiss the complaint on the ground that this court lacks in personam jurisdiction is granted, and it is  
SO ORDERED.

The Clerk of the Court is directed to enter judgment in favor of the defendants Southern Vermont, Grande and Patten, and against the plaintiffs, dismissing the complaint.

  
U. S. D. J.

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

|                                           |   |                         |
|-------------------------------------------|---|-------------------------|
| -----X                                    | : | 71 Civil 371            |
| ROBERT E. McDONNELL and ROBERT DeMARTINO, | : |                         |
|                                           | : |                         |
| plaintiffs,                               | : |                         |
|                                           | : |                         |
| -against-                                 | : | <u>NOTICE OF APPEAL</u> |
|                                           | : |                         |
| SOUTHERN VERMONT LAND COMPANY, INC.,      | : |                         |
| HARRY S. PATTEN, MORTON FREEDMAN and      | : |                         |
| PHILIP GRANDE,                            | : |                         |
|                                           | : |                         |
| Defendants.                               | : |                         |
| -----X                                    | : |                         |

S I R S :

PLEASE TAKE NOTICE that the plaintiffs ROBERT E. McDONNELL and ROBERT DeMARTINO hereby appeal from the Memorandum, Decision and Order of the United States District Court, Eastern District of New York (Mischler, C.J.) dated January 4, 1977 so far as said Decision and Order dismisses the Complaint against defendants SOUTHERN VERMONT LAND COMPANY, INC., HARRY S. PATTEN and PHILIP GRANDE, on the grounds that the Court lacks in personam jurisdiction.

Dated:       New York, New York  
             January 19, 1977



Yours, etc.,

BENJAMIN J. GOLUB, ESQ.  
Attorney for Plaintiffs  
Office & P.O. Address  
10 East 40th Street  
Ne York, New York 10016  
(212) 686-4300

TO: Clerk, United States District Court  
Eastern District of New York  
Cadman Plaza  
Brooklyn, New York

LAPPIN, ROSEN GOLDBERG,  
SLAVET, LEVENSON & WEKSTEIN, ESQS.  
1 Boston Place  
Boston, Mass. 02108

MORTON FREEDMAN,  
Defendant Pro Se  
57 Main Street  
North Adams, Mass.

VISCARDI & STEINMAN  
80-57 Lefferts Boulevard  
Kew Gardens, New York

ORDER AMENDING MEMORANDUM OF DECISION AND ORDER  
DATED JANUARY 4, 1977

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

ROBERT E. McDONNELL and  
ROBERT DeMARTINO,

Plaintiffs

-against-

SOUTHERN VERMONT LAND COMPANY,  
INC., HARRY S. PATTEN, MORTON  
FREEDMAN and PHILLIP GRANDE,

Defendants.

FILED 76 C 371  
IN CLERK'S OFFICE  
U. S. DISTRICT COURT E.D.N.Y.

★ MAR 16 1977 ★  
TIME A.M. \_\_\_\_\_  
P.M. \_\_\_\_\_

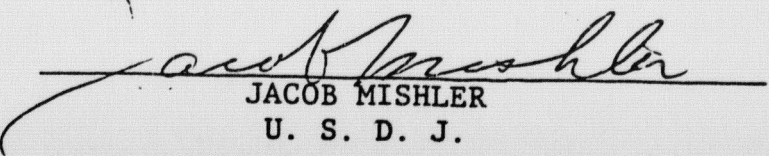
ORDER AMENDING  
MEMORANDUM OF DECISION  
AND ORDER DATED JANUARY  
4, 1977.

MISHLER, CH. J.

The court's memorandum of decision and order dated January 4, 1977, is hereby amended so that the last paragraph on page eleven, to wit, "The Clerk of the Court is directed to enter judgment in favor of the defendants Southern Vermont, Grande and Patten, and against the plaintiffs, dismissing the complaint," be and the same hereby is amended nunc pro tunc to January 4, 1977, to read as follows:

The court finding that there is no just reason for delay, the Clerk of the Court is directed to enter judgment in favor of the defendants Southern Vermont Land Company, Inc., Harry S. Patten and Phillip Grande and against the plaintiffs, dismissing the complaint.

Dated: Brooklyn, New York  
March 16, 1977

  
JACOB MISHLER  
U. S. D. J.



## JUDGMENT DISMISSING COMPLAINT

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

FILED  
IN CLERK'S OFFICE  
U. S. DISTRICT COURT E.D.N.Y.

★ MAR 16 1977 ★

ROBERT E. McDONNELL and  
ROBERT De MARTINO,

Plaintiff,

-against-

SOUTHERN VERMONT LAND COMPANY,  
INC., HARRY S. PATTEN, MORTON  
FREEDMAN and PHILLIP GRANDE,

Defendants.

TIME A.M. 11  
P.M. 11

JUDGMENT

76-C-371

An order of Honorable Jacob Mishler, United States District Judge, having been filed on March 16, 1977, amending the Court's memorandum of decision and order dated January 4, 1977 nunc pro tunc to January 4, 1977, and the Court finding no just reason for delay and directing the Clerk to enter judgment in favor of the defendants Southern Vermont Land Company, Inc., Harry S. Patten and Phillip Grande and against the plaintiffs, dismissing the complaint, it is

ORDERED and ADJUDGED the the plaintiff taking nothing of the defendants, Vermont Land Company, Inc., Harry S. Patten and Phillip Grande and that the complaint against Vermont Land Company, Inc., Harry S. Patten and Phillip Grande is dismissed.

Dated: Brooklyn, New York  
March 16, 1977

LEWIS ORGEL

Clerk

By:

*Thomas Blustein*

Chief Deputy Clerk

STATE OF NEW YORK )  
COUNTY OF NEW YORK) ss .

JULIO VALLEJO, JR., being duly sworn,  
deposes and says that deponent is not a party to the action,  
is over 18 years of age and resides at 703 REMSEN AVE.  
BROOKLYN, NYC.

That on the 22nd day of MARCH, 1977,  
deponent personally served the within APPENDIX

upon the attorneys designated below who represent the  
indicated parties in this action and at the addresses below  
stated which are those that have been designated by said  
attorneys for that purpose.

~~By leaving~~        true copies of same with a duly  
~~authorized person at their designated office.~~

By depositing ONE true <sup>COPY</sup> ~~copies~~ of same enclosed  
in a postpaid properly addressed wrapper, in the post office  
or official depository under the exclusive care and custody  
of the United States post office department within the State  
of New York.

Names of attorneys served, together with the names  
of the clients represented and the attorneys' designated  
addresses.

LAPPIN, ROSEN, GOLDBERG, SLAVET, LEVENSON & WEKSTEIN  
Attorneys for Defendant-Appellee, Southern Vermont Land Company, Inc.  
1 Boston Place, Boston, Mass. 02108

VISCARDI & STEINMAN  
Attorneys for Defendant-Appellee, Morton Freedman  
89-57 Lefferts Boulevard, Kew Gardens, N. Y.

DOLAN, McMAHON & MARTINI  
Attorneys for Defendant-Appellee, Philip Grande  
120 Broadway, New York, N. Y. 10004

Sworn to before me this

22nd day of MARCH, 1977.

*Michael De Santis*

MICHAEL DeSANTIS  
Notary Public, State of New York  
No. 03-0930908  
Qualified in Bronx County  
Commission Expires March 30, 1979

*Julio Vallejo, Jr.*